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Vol. VIII
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 606

LOUIS BUCHALTER, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF
NEW YORK

No. 610

EMANUEL WEISS, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

No. 619

LOUIS CAPONE, PETITIONER,

vs.

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NEW YORK

PETITIONS FOR CERTIORARI FILED { DECEMBER 30, 1942.
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JOHN FURLAN, 4418 Foster Avenue, Brooklyn, New York, was interrogated as to his qualifications.

By Mr. Turkus:

Q. You are an insurance broker?

A. Yes, sir.

Q. Your address is 4418 Foster Avenue?

A. Yes, sir.

Q. Have you heretofore served as a juror in any case?

A. Yes, sir.

Q. A criminal case?

A. Yes, sir.

Q. In this court?

A. Yes, sir.

Q. How recent was that service?

A. Seven or eight years ago.

Q. Were any of the lawyers who are in court now engaged in the conduct of that lawsuit?

A. No, sir.

Q. Do you know any of the nine lawyers who represent [fol. 2093] these defendants?

A. No, sir.

Q. Or any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Was this case you served on in the County Court a capital case?

A. No, sir.

Q. Who was the judge in the case?

A. Judge Nova.

Q. Did you hear the judge charge the jury on the law?

A. Yes, sir.

Q. Do you know anybody on Foster Avenue named Walker—Dorothy Walker?

A. No, sir.

Q. Is that considered Flatbush?

A. That is East Flatbush.

By the Court:

Q. You are up near the swimming pool?

A. About two blocks away.

By Mr. Turkus:

Q. Where is your office?

A. My home address.

Q. How long have you been in the insurance business as a broker?

A. Twenty years.

Q. Do you have neighborhood trade or does your business take you all over the city?

A. All over the city.

Q. Do you have clients?

A. Customers. Clients are for lawyers.

Q. Do you have any business connection with people in the East New York section of Brooklyn, Brownsville and Ocean Hill?

A. No, sir.

[fol. 2094] Q. Do you know what I mean by Ocean Hill, that is around Eastern Parkway and Atlantic Avenue?

A. I understand.

Q. Did you have any business connection with people in the garment district?

A. I have.

Q. People who manufacture clothes?

A. I have.

Q. How frequently do you see those people?

A. When I get renewals.

Q. That is either once a year or once in three years?

A. Once a year.

Q. You say you have been in business thirty years?

A. Close to that.

Q. And it must be for a number of years you have been having contacts with people in the garment and clothing business?

A. Yes, sir.

Q. I suppose when you were in that district you heard things discussed?

A. Yes, sir.

Q. Was the name of Lepke and Gurrah familiar to you?

A. Yes, sir.

Q. Have you an impression about the name Lepke?

A. Yes, I have, I should say I have an opinion.

Mr. Rosenthal: I challenge for cause.

The Court: Try the challenge.

JOHN FURLAN, No. 2660, residing at 4418 Foster Avenue, Brooklyn, New York, was sworn on the challenge.

[fol. 2095] By Mr. Turkus:

Q. When you occupied Seat No. 12, you told me in substance that you had business or contacts with people in the garment district of Brooklyn?

A. Yes.

Q. The names of Lepke and Gurrah are familiar to you?

A. Yes, sir.

Q. I asked you if you had an impression and you told me you had an opinion about Lepke.

A. Yes, sir.

By the Court:

Q. As to guilt or innocence on this charge?

A. No, not as to the merits of the charge, but as to the character of the defendant.

Q. Is that such an impression that you could not lay it aside?

A. No.

Q. You could not lay it aside?

A. No, sir.

Q. Are you positive it would influence your judgment in the decision of this case?

A. Yes, sir.

Mr. Barshay: No questions.

The Court: Challenge sustained.

ARTHUR S. FUNK, No. 2765, residing at 1256 East 13th Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You live on East 13th Street?

A. Yes.

[fol. 2096] Q. Is that near Avenue L?

A. That is the corner of Locust Avenue, a short street that comes in between Avenue L and M.

Q. Is that known as the Kings Highway section?

A. Yes, sir, it is near Kings Highway.

By the Court:

Q. That is in the Elmwood section?

A. I suppose so. There is Elm Avenue near there.

Q. You use the Avenue M station?

A. Yes, sir; I am only there a week or so.

By Mr. Turkus:

Q. I think you told the Judge you only live there a week or two?

A. Yes, sir.

Q. Mr. Rosenthal correctly informed me that you are listed as at Avenue K.

A. Yes, sir.

Q. You did live there?

A. Yes, sir.

Q. How many have you lived in that neighborhood?

A. Four years.

Q. That is what would be commonly called Kings Highway?

A. That is further away from Kings Highway.

By the Court:

Q. Are you related to Dr. Funk?

A. No, sir, I am not.

Q. His office is near you?

A. That is right. I know him.

By Mr. Turkus:

Q. Did you live in some other district of Brooklyn before [fol. 2097] you lived at Avenue K?

A. I lived on Ocean Parkway and Albemarle Road, and prior to that on Linden Boulevard.

Q. You are an insurance broker?

A. Yes, sir.

Q. Are you in business for yourself?

A. I am a member of a corporation.

Q. So you have a financial interest in the company?

A. Yes, sir.

Q. What is the name of the company?

A. L. V. Funk & Son, insurance, 44 Court Street.

Q. You are right here in the downtown district?

A. Yes, sir.

Q. Do you know anyone working for them in their office?

A. Well, my business does not bring me into much contact with lawyers.

Q. Does your business bring you in contact with people throughout Brooklyn, in various sections of Brooklyn?

A. Yes, sir.

Q. Do you know any of the nine lawyers in this case?

A. No.

Q. Or anybody connected with their law offices—Mr. Barshay has a very nice law office in Court Street.

A. No.

Q. Do you know anyone working for them in their office?

A. No, sir.

Q. Do you know any lawyer who specializes in the defense of criminal cases?

A. I know Dave Price.

Q. A partner of William W. Kleinman?

A. Yes, sir. I used to go to school with him twenty years [fol. 2098] ago. I had contact with him six years ago in the County Court, in a case which he was defending. I have not seen him since.

Q. Do you know Mr. Kleinman or Mr. Price?

A. No, sir, I do not.

Q. Mr. Kleinman is now a Captain in the United States Army, he is not now practicing law, and Mr. Price is maintaining their office at No. 66. You do not know either one?

A. No, sir.

Q. Has business brought you in contact with the East New York area of Brooklyn?

A. No, sir.

Q. Or the Ocean Hill section?

A. No, sir.

Q. Or the Brownsville area?

A. Slightly.

Q. Are you familiar with the corner of Saratoga and Livonia Avenues?

A. Yes, sir.

Q. The corner, when I say the corner, I mean where the candy store is; do you know that corner?

A. I don't know what business is located there. Once or twice I had to get off that subway station, but otherwise I do not know what the business is or anything else.

Q. Do you know people who live in that district?

A. The closest I know anybody there would be Hepkinson Avenue and Riverdale.

Q. That is in the heart of Brownsville?

A. Yes, sir.

Q. Would that be sort of a social contact?

A. A social contact.

Q. How long have you known this person, over a period of [fol. 2099] years?

A. Yes, sir.

Q. Would there be some reason you would not want to disclose to me?

A. No, sir, not at all.

Q. Who is it whom you know?

A. It happens to be an attorney employed by the Modern Industrial Bank.

Q. Since it is in that area, I wanted to know something about the name, and there is a reason I asked that for.

A. I understand, Mr. Opperman.

Q. I suppose you know Mr. Opperman over a period of years?

A. Yes, sir.

Q. Does business bring you into any contact with the manufacturers of clothing, either ladies' or men's clothing or boys' clothing?

A. We have just one client, a ladies' dress contractor.

Q. What is the name of the man?

A. Hyman Block (?).

Q. Where is his place of business?

A. I think that is on West 36th Street, Manhattan.

Q. Did you have any other contract in the clothing district?

A. That is the only one.

Q. Does business bring you in frequent contact with the Block people?

A. No, sir, about twice a year.

Q. As a result of any acquaintance you have had, either in Brownsville or in connection with your business in the garment district, did you ever hear any discussion about either the Dewey or the O'Dwyer investigations?

A. No, sir.

[fol. 2100] Q. Is there anything you have heard or read about the name of Lepke and Gurrah which makes it familiar to you?

A. Yes.

Q. Has anything you have heard or read caused you to form an impression about those names?

A. I heard the names. Nothing I have read has caused me to form any impression, but I have heard of the names from various sources and I may say it has caused some impression.

Q. Would they be impressions detrimental to the people who bore those names?

A. Yes, sir.

Q. If people by those names were to figure in this case would you start off with a prejudice against them?

A. Yes, sir, I would have a prejudice; that is right.

Mr. Turkus: We will have to try a challenge on this.

ARTHUR S. FUNK, No. 2765, residing at 1256 East 13th Street, Brooklyn, New York, sworn on the challenge.

By Mr. Turkus:

Q. You told me while sitting in Chair No. 11 that you had social contact in the Brownsville section and that you have had business contact in the garment center in Manhattan.

A. Yes, sir.

Q. That you have heard certain things in connection with the names of Lepke and Gurrah.

A. Yes, sir, that is right, but I did not give you the im-[fol. 2101] pression that it was through contact.

Q. No, but from some source you have heard things about Lepke and Gurrah?

A. Yes, sir.

Q. Which caused you to form an impression detrimental to the people who bear those names?

A. Yes, sir.

Q. The impression you cannot remove from your mind?

The Court: He does not have to remove it, he is only asked to disassociate and put it aside and disregard it.

Q. At any rate, I have gone into it in detail before the prospective juror was sworn.

If I asked you the same questions I did when you were in the chair, would you make the same responses?

A. Yes, sir, I would.

By Mr. Barshay:

Q. You understand Gurrah has nothing to do with this case, don't you?

A. Yes, sir.

Q. You said you had some prejudice against the other name. Is it one that goes to the guilt or innocence of the defendant?

A. Not bearing upon this specific case.

Q. Have you an abiding opinion or impression that is adverse to him in any respect?

A. Yes, sir.

Q. Is it one that may affect his standing with respect to you in this case?

A. It might make it easier to believe certain unfavorable things.

Q. Against him?

A. That is right.

[fol. 2102] Q. So you would require some evidence forthcoming from him or on his behalf to remove whatever impression you have?

A. I would require pretty strong evidence.

Q. And it would have to come from the defendant?

A. Yes, sir.

Q. If it did not, you would hold it against him?

A. Yes, sir.

Q. The nature of the proof that would be required against him on behalf of the prosecution would naturally be less because of the prejudice you have?

A. Naturally.

The Court: Challenge sustained.

By Mr. Turkus:

Q. Mr. Wemmell, Mr. Price was a lawyer in a certain case which I cannot mention now. Did he talk to you about any such case?

A. No, sir.

Q. Did you follow any of the cases in which he appeared as a defense lawyer against me when I was the prosecutor?

A. No, sir.

Q. Was that a special jury you were on?

A. It was on a bribery case, last November, Michaels Brothers.

Mr. Barshay: That was my case.

Q. Were you on the jury in that case?

A. I was not called.

Q. Was Mr. Barshay one of the defense lawyers?

A. Yes, sir.

Q. Not Mr. Price?

A. No, sir.

By the Court:

Q. How long is it since you contacted Mr. Price?

[fol. 2133] A. About six years ago.

Q. Were you personally interested?

A. No, sir. I had not seen him since forty years ago; I used to go to school with him in East New York.

Q. Since then you have not had any contact with him?

A. Up to about six years ago; I was drawn on the panel in a case he was defending, and I saw him.

Q. Do you recall anything about the case?

A. No, sir.

Q. You were excused?

A. Yes, sir.

Q. Was that a special jury case?

A. No, sir, a regular jury. I think it was before Judge Fitzgerald.

Q. That would not make any difference in this case?

A. I would say not.

By Mr. Turkus:

Q. In connection with your knowledge of Mr. Price did you ever hear the names of Harry (Happy) Maione or Frank (The Dasher) Abbandando?

A. No.

Q. Or Martin (Bugsy) Goldstein or Pittsburgh Phil Strauss?

A. No, sir.

Q. Since receiving your jury notice did anybody speak to you about the case?

A. My wife, that is all.

Q. Was that with respect to an opinion on something with respect to jury service?

A. Jury service.

By the Court:

Q. What school was that you went to?
[fol. 2104] A. Public School 76, on Wyona Street.

By Mr. Turkus:

Q. Was there any discussion, when you saw the gentleman, about the defendants in the case?

A. No, sir, just taking it as a whole—just mentioned I was called.

By the Court:

Q. Where did you live at that time?

A. In East New York. Atlantic Avenue between Georgia and Sheffield, right near Piel Brothers Brewery.

Q. That is forty years ago?

A. Yes, sir.

Q. Brownsville had not been built up?

A. No, sir, it was only starting. They used to call that New Lots.

Q. That was farm land?

A. Yes, sir.

By Mr. Turkus:

Q. I think you told the Judge you lived on Atlantic Avenue between Georgia and Sheffield?

A. Yes, sir.

Q. Is there anything about the name of George Rudnick which is familiar to you?

A. No, sir.

Q. Did you hear anything about an accident that took place in 1937 on Atlantic Avenue near Eastern Parkway in a garage?

A. I cannot recall that.

Q. None of the names I have mentioned, Maione, Abbandando, Strauss, or Goldstein are familiar?

A. No, sir.

Q. From anything you read in the newspapers or heard discussed?

A. No, sir.

[fol. 2105] Q. Did you read anything about the O'Dwyer investigation?

A. A little.

Q. Was that starting in January, 1940, when Judge O'Dwyer became District Attorney?

A. I don't know.

Q. Was it in connection with certain investigations he conducted in Brownsville and East New York?

A. It was.

Q. Do you retain any impression of what you read from those articles?

A. No, sir, I read the paper just for one reason, the war news and the sports.

Q. What paper do you read?

A. The *World-Telegram* and the *New York Times*.

Q. The *World-Telegram* since January, 1940, on over fifty occasions had a front sheet story about the O'Dwyer investigation. Did anything you read in the *World-Telegram* leave any impression?

A. No, sir, absolutely not.

Q. Are the names Lepke and Gurrah familiar names to you from reading?

A. No, sir.

Q. From what you have read, is there any impression in your mind as to the men Lepke and Gurrah?

A. No.

Q. You have no impression about them at all?

A. No, sir, I have not.

Q. Is there any connection at all—or have you had any contact with anybody in the clothing or garment center?

A. No, sir.

Q. Did you maintain any contact, social or otherwise, in [fol. 2106] Brownsville or East New York?

A. No, sir.

Q. Or in Oceanview?

A. No, sir.

Q. Are you devoting yourself now to an investigation?

A. No, sir, off and on.

Q. When you are not conducting investigations what do you do?

A. I am home most of the time.

Q. Have you retired from active business?

A. No, sir.

Q. Do you mean by that that if you got a good job you would take it?

A. Yes, sir.

Q. I want to find out if you spend all your time investigating.

A. No, sir.

Q. Have your investigations brought you in contact with any police agency or any law enforcement agency?

A. No, sir.

Q. At no time have you been a witness or a participant in any litigation?

A. No, sir.

Q. In any lawsuits?

A. No, sir.

Q. Do you know the District Attorney of the county or any member of his staff?

A. I do not.

Q. Do you belong to any societies?

A. No, sir.

Q. In your spare time in the evening, do you devote that how?

A. I listen to the radio.

Q. Did you hear anything on the radio in connection with the O'Dwyer or the Dewey investigations?

A. No, sir.

Q. Or about Lepke or Gurrah?

A. No, sir.

Q. Did you listen to the Walter Winchell program?

[fol. 2107] A. Yes, occasionally.

Q. Did you hear the name of Lepke mentioned on that program?

A. No, sir.

Q. Have you at any time during your past life had any outside contact by way of fraternities or societies?

A. Yes, sir. I used to belong to the Knights of Pythias, years ago, but I am not in it at the present time.

Q. Are you a Past Commander?

A. A Past Chancellor.

Q. Do you know the name of the lodge?

A. 108, Allegheny.

Q. That would be upstate?

A. No, sir, on Broadway.

Q. I doubt if that lodge is in existence now.

A. I don't know, I have not been in it in twelve or fifteen years.

Q. Do you know Counselor Lustig?

A. No, sir.

Q. Or any of the present officials or Grand Officers of the Lodge?

A. No, sir.

Q. You maintain no contact at all with them?

A. No, sir.

Q. Do you know any Assistant District Attorney on the staff of Judge O'Dwyer?

A. No, sir.

Q. Do you know any police officials?

A. No, sir.

Q. Did you ever belong to any law-enforcement agency or society?

A. No, sir.

Q. Or mingle with any officers of the law-enforcement agencies?

A. No, sir.

Q. Have you heard that part of the case may rest upon the testimony of an accomplice?

A. Yes, sir.

[fol. 2108] Q. As you sit in the jury box now, do you have any bias or prejudice against the defendants?

A. No, sir.

Q. Do you have any bias or prejudice against the prosecution which employs the use of one of the perpetrators of a crime against the other defendants on trial?

A. No, sir.

Q. Do you find any fault with the prosecutor of the county accepting testimony of an accomplice and using it against the other participants in the crime?

A. No, sir.

Q. Do you understand that in weighing the believability of an accomplice's testimony, that Judge Taylor, who presides, will give you instructions on the law?

A. Yes, sir.

Q. And that it will be your duty to apply these instructions on the law to the facts and to the witnesses in this case?

A. Yes, sir.

By the Court:

Q. You live quite a distance from the Brownsville and East New York section now?

A. Yes, sir.

Q. How long ago did you live in that section?

A. I lived in the same section, 91 Cornelia Street, for thirteen years. I have only made three moves in thirty years.

Q. How long ago is it since you lived in Atlantic Avenue?

A. Thirty years ago.

Q. That was just before the elevated structure was built?

A. Yes, sir.

By Mr. Turkus:

Q. Did you live in the Bushwick section at that time?

[fol. 2109] A. At the present time.

Q. Have you lived there for more than four years?

A. I live there for thirty years, in the same section.

Q. Is there any occurrence which took place that is at present in your mind, either by way of knowledge or newspaper reading?

A. No, sir.

Q. Specifically, the place in front of 1190 Jefferson Avenue.

A. No, sir, I do not recall it.

By the Court:

Do you belong to any clubs in Bushwick?

A. No, sir.

Q. You are not far from the Turn Verein?

A. No, sir, not a great ways. I understand that building has been sold to the Salvation Army, at Gates and Bushwick.

By Mr. Turkus:

Q. Are you in sympathy with the law enforcement?

A. Yes, sir.

Q. Anything that has occurred by virtue of your investigation or conduct or contact with this litigation in the Surrogate's Court has in no wise impaired your ability to be a fair and impartial juror in a case in which the People of the State of New York are a party?

A. No, sir.

By the Court:

Q. But you are within one block of Jefferson Avenue?

A. Yes, sir.

Q. Do you have any personal recollection of something [fol. 2110] happening there a few years ago?

A. No, sir.

By Mr. Turkus:

Q. Did you ever hear of any individual, by reading about it, by the name of Feinstein, or one named George Rudnick, in connection with the occurrence that took place on Jefferson Avenue near Central?

A. I cannot recall those names.

Q. I will just go one step further. I will mention the fact of an automobile. Have you any recollection?

A. No, sir.

By the Court:

Q. That was only two blocks from where you live.

A. It might be, but I have no recollection.

By Mr. Turkus:

Q. There was a good deal of Newspaper publicity about the accident, and you read nothing about it?

A. That is all I recall.

Q. I think we got to the point where you said you had no bias or prejudice against the prosecutor or the prosecution wherein accomplice testimony is employed?

A. That is right.

Q. You will follow the tests given you by the Court in applying it to that type of testimony?

A. Yes, sir.

Q. Will you, when you apply the tests, no matter whether they apply to motive or anything else, keep uppermost in your mind that your job is to find out is this accomplice telling the truth about the defendants and the part that each one of them played in the commission of the murder? Does [fol. 2111] that sound sensible to you, to apply that test?

A. Yes, sir.

Q. Should the Judge tell you that there cannot be a conviction only on the testimony of an accomplice or one of the perpetrators of the crime, and that there must be independent proof that need not support the accomplice in every point he talks about, but independent proof may be deemed sufficient by the jury when believed if it tends to connect

the defendants and each of them in the commission of the crime?

A. Yes, sir.

Q. Is that understandable to you?

A. Yes, sir.

Q. And will you endeavor conscientiously to apply it to the facts in this case?

A. I will.

Q. Will you keep in mind, keep your mental faculties down to the fact it is not whether you like or dislike an accomplice, it is does he tell the truth about the group or combination participation of the defendants and himself in the commission of the crime?

A. Yes, sir.

Q. In other words, does he tell the truth about these defendants and himself, about the group or combination that committed the murder?

A. Yes, sir.

By the Court:

Q. When you went to the Public Administrator, do you mean in Brooklyn?

A. No, sir, in New York County.

Q. Is that somewhat of an old estate?

A. Yes, sir, it is about thirty-five or forty years old.

Q. Who are the lawyers?

[fol. 2112] A. A party named Bakerman draw up the figures.

Q. John J. Bakerman.

A. No, sir. I forget his first name. He is at No. 15 Park Place—Howard Bakerman.

By Mr. Turkus:

Q. What is the name of the estate?

A. William E. Wright Estate.

Q. Where did this man die?

A. He died in Manhattan, and we came across it by reason of a savings bank account.

By the Court:

Q. There were no lawyers in that case who might be connected with this?

A. Absolutely none. He only drew up the papers.

Q. Is the sole asset of the estate some bank account?

A. Yes, sir, about forty years ago, a savings bank account, and we really found out about it five years ago.

Q. Are you represented by counsel in your endeavor to secure that asset of the estate?

A. No, sir.

Q. You are doing that yourself?

A. Yes, sir.

By Mr. Barshay:

Q. Mr. Wennell, have you done any other investigating work?

A. No, sir, that is my first.

Q. May I know your business before that?

A. I was a salesman in the printing line.

Q. Did you ever do any court work?

A. Never.

Q. Do you do field work for lawyers?

A. No, sir.

Q. Commercial printing?

A. Yes, sir.

[fol. 2113] Q. Were you ever the victim of any crime?

A. No, sir.

Q. Or was any member of your family?

A. No, sir.

Q. Did you ever serve as a federal juror?

A. No, sir.

Q. Have you served as a grand juror?

A. No, sir.

Q. You just have the recollection of my being in the last case?

A. I have a faint recollection. I could not say what the charge was.

Q. Do you read the newspapers?

A. Well, yes.

Q. I mean any particular newspaper?

A. Yes, sir, the *New York Times*, the *Evening Journal*, and now and again the *Telegram*.

Q. Did you read about the defendants in this case?

A. To some extent.

Q. Was it before you were called for service?

A. Yes, sir.

Q. Did you read more than one item about them before you were called for service?

A. Perhaps I read a few, not more, because, as I said before, I am not interested in that kind of reading.

Q. Did the first item cause you to have any impression?

A. No, sir, I was disinterested.

Q. Was the interest carried over so that you wanted to read something else?

A. No, sir.

Q. The first impression you had, was that pertaining to the defendants?

A. It was.

Q. Were they impressions you had by virtue of reading [fol. 2114] these articles?

A. Yes, sir.

Q. Were they favorable or unfavorable to the defendants?

A. I should say half way.

Q. You did not make up your mind?

A. No.

Q. At any rate, they were slightly unfavorable; put it that way.

A. Somewhat.

Q. When you were called for jury duty, you still retained that slightly unfavorable idea about them?

A. I had no idea these defendants were coming up on trial.

Q. When you came here you got that idea?

A. Yes, sir, after I came here.

Q. You came with a slight unfavorable impression?

A. Yes.

Q. Did you read any other papers?

A. No, sir, not since the Judge told us not to, particularly about articles on the case.

Q. Since you were called, have you retained that slight unfavorable impression?

A. No, sir, I cannot say so.

Q. Was it removed?

A. Yes, sir, my mind is clear.

Q. So that at present the defendant starts off at scratch with you?

A. Yes, sir.

The Court: Those in charge of the prisoners will see that they abstain at all times from conversation with other persons. There must be no violation of this rule. This is bearing upon court-room discipline; it does not affect the trial of the case?

[fol. 2115] Q. Are you employed now in any way?

A. No, sir, only what I do in investigating work.

Q. Have you a personal interest in it?

A. Yes, sir, I expect to get money out of it.

Q. Your employment is along that line?

A. Yes, sir.

Q. Is it contested litigation?

A. Yes, sir, as far as I know.

Q. May I know how long you have been employed in any concern?

A. Ten years.

Q. How long were you investigating this claim?

A. About five years now.

Q. Are you married?

A. Yes, sir, thirty years.

Q. Any children?

A. No, sir.

Q. As you heard the prospective jurors being questioned over a period of days, did you form any idea with respect to this case?

A. No.

Q. Did you favor either side?

A. I did not.

Q. Did you?

A. No, sir.

Q. Did you partake in any political campaigns?

A. No, sir.

Q. Do you know anyone at all connected with the Police Department or the District Attorney's office?

A. No, sir.

Q. Or with any investigating agency?

A. No, sir.

Q. Are you a member of any law enforcement society?

A. No.

Q. Or any society for the prevention of crime?

A. No, sir.

Q. Did you ever have occasion to make a complaint [fol. 2116] against anyone in the District Attorney's office or the Police Department?

A. Never.

Q. Were you ever a witness in any criminal prosecution?

A. No, sir.

Q. Or in any civil litigation?

A. No, sir.

Q. Are any of the names that were read by Mr. Turkus or spoken of by Mr. Turkus, familiar to you?

A. No, sir.

Q. Reles, and all the way down?

A. No, sir.

Q. Have you any prejudice against people who are charged with crime?

A. No, sir.

Q. Are you in accord with the principles of law that an indictment filed in this court against a defendant is purely an accusation and has no weight or evidentiary value or any probative force? Are you in accord with that principle?

A. Yes, sir.

Q. Do you believe in the principle of law that every defendant is presumed innocent until he is found guilty under this charge beyond a reasonable doubt?

A. Yes.

Q. Do you believe in the principle of law that the presumption of innocence is fixed in favor of the defendant?

A. Yes, sir.

Q. And that it is so substantial that the enforcement of this presumption of innocence is at the very foundation of the administration of our law?

A. Yes, sir.

Q. You are in full accord with that?

A. Yes, sir.

[fol. 2117] Q. Do you believe, then, that when a defendant pleads not guilty he denies each and every allegation against him in this case?

A. Yes, sir.

Q. That means that he denies he is an accomplice of any person?

A. Yes, sir.

Q. So when a man comes here and says, "I am an accomplice," or a group of men come here and say that, you would be the one to find out whether or not he is an accomplice, won't you?

A. Yes, sir.

Q. He may admit it—his own participation, as has been

well said by another lawyer, but you are the one to find out whether or not he is telling the truth with respect to who is his accomplice?

A. Yes, sir.

Q. And so, will you take into consideration that if a person comes here and says that he is an accomplice of Buchalter, that he never saw or spoke to Buchalter, will you take that into consideration in considering whether or not that person is telling the truth with respect to his being an accomplice of Buchalter?

A. Yes, sir.

Q. In other words, he may claim he is, but there may be no truth in it?

A. Yes, sir.

Q. You have had experience, I take it, in judging whether or not a man tells the truth on given occasions?

A. Yes, sir.

Q. You have had experience to judge men who on some occasions tell partly the truth and partly lie?

A. Yes, sir.

[fol. 2118] Q. Sometimes they may have, in order to tell the truth about themselves, another motive to lie about someone else?

A. Yes, sir.

Q. You will consider that too?

A. Yes, sir.

Q. And if, after he has finished, and it is drawn from him and he admits that all this time he has been a moral bankrupt, a crook, a murderer, all along down the line, you will look upon him with suspicion, won't you?

A. Yes, sir.

Q. You will weigh every bit of testimony he gives?

A. Yes, sir.

Q. Always keeping in mind the presumption of innocence?

A. Yes, sir.

Q. And if you find that that person has some reason, some grudge, some idea for revenge, or any other reason to falsify even part of his story, you will be on the alert to find out whether that is so or not?

A. Yes, sir.

Q. If your dislike for him is based upon the fact that he has falsified, you will show that dislike in weighing his testimony?

A. Yes.

Q. You have heard that, assuming we get to the point of accomplice and it is believed by you, you will have to come to another point?

A. Yes, sir.

Q. You will want to know where the source of the corroborating testimony comes from, and if the prosecution should offer a group of men or a man whose background is no better than and conceivably worse than the accomplice's, will you weigh his testimony very, very carefully?

A. Yes, sir.

Q. You will not swallow it?

A. No, sir.

Q. And what is the weight to be given to corroborating testimony would be for you to decide; is that correct?

A. Yes, sir.

Q. So if a man takes the stand and says he participated in the shooting of Rosen and the police come and say they found the body where it is alleged to have been shot, that is not corroboration against the defendant, you understand that; that may be corroboration up to the fact he is telling the truth about himself, but it does not tie up in any wise the defendants; you understand that?

A. Yes, sir.

Q. And all this time while the case is going on will you keep in mind the other principle of law which is provided for here, that it is the District Attorney's job to prove the accusation and nobody else's?

A. Yes, sir.

Q. Are you in accord with that?

A. Yes, sir.

Q. And there is still another principle, that the burden shall never shift in any phase of this case to the defendant; are you in accord with that?

A. Yes, sir.

Q. In other words, no defendant need prove his innocence; you understand that?

A. Yes, sir.

Q. And of course you will keep in mind this invisible portiere, the presumption of innocence, which surrounds the defendants, as a barricade which the District Attorney must [fol. 2120] throw down by believable evidence?

A. Yes, sir.

Q. And if the Court shall charge you that the failure of the defendant to take the stand shall form no unfavorable inference against him, will you take into consideration, if the defendant Buchalter does not take the stand or call people in his behalf, in considering his innocence or guilt, will you do that?

A. Yes, sir.

Q. You understand the Court will tell you he need not do it, but will you expect him to do it despite the Court's charge?

A. No, sir.

Q. The Court will tell you further that proof must be beyond a reasonable doubt—no lawyer has a right to try to define that "beyond a reasonable doubt," so that you may believe a person is guilty, you may have a suspicion that he is guilty, you may have an idea he is guilty, but that is not enough, you understand that?

A. Yes, sir.

Q. It must be beyond a reasonable doubt, and if you find one doubt for which you can ascribe a reason which arises from the evidence, will you give it to the defendant?

Mr. Turkus: I object; that is not a proper instruction.

Q. The exact legal language is, if you find a reasonable doubt as to the defendants' guilt which arises out of the evidence, will you give it to the defendant?

A. Yes, sir.

Q. And there may be testimony offered which is subject to two interpretations, one of innocence and one of guilt. [fol. 2121] For example, there may be testimony as to associations between some of the defendants and other people. If you decide that that association is an innocent one, of course, you will give it that interpretation?

A. Yes, sir.

Q. And if there is a doubt whether there is innocence or guilt, and the Court tells you in such event you must give it to the defendants on the basis of innocence, you will do that?

A. Yes, sir.

Q. When you don't know whether it is an innocent or a guilty one, and the Court shall tell you in that event you still must interpret it as beneficial to the defendants and as an innocent one, will you do that?

A. Yes, sir.

Q. It has been brought out that the defendant Buchalter is incarcerated for a period of forty to seventy-seven years. I brought that out to find out whether you or any other juror might be prejudiced against a man who has been convicted and punished. Would you?

A. No, sir.

Q. You understand that has nothing to do with this case?

A. Yes, sir.

Q. We seek no sympathy by virtue thereof, but we do not want any prejudice against him. You will not be prejudiced against him?

A. No, sir.

Q. You understand that his character here is not in issue unless he chooses to make it an issue?

A. Yes, sir.

Q. And if he does not choose to make it an issue, you will [fol. 2122] not consider it in any respect?

A. No, sir.

Q. Other lawyers have indicated to you, without binding themselves, that they may offer an alibi. Without promising anything to you, sir, if it should develop that some defendant offers a defense and our defendant does not, will you hold that against our defendant?

A. No, sir.

Q. You understand that each one is being tried separately?

A. Yes, sir.

Q. You are in accord with the principles that evidence as given against one person is binding only against that person unless his Honor charges you otherwise?

A. Yes, sir.

Q. There may be evidence here which applies to A, which is absolutely not believed as to another. If that is the fact, you will consider it?

A. Yes, sir.

Q. Mr. Turkus has said to you that an argument has not three times the force if it is repeated three times. That is true, but sometimes in the retelling of an argument it may lose its force—we cannot control that. I have a right to speak for my client, Mr. Rosenthal for his, and Judge Talley and Mr. Cuff for theirs. You will not, because of the necessity that the same point of view is applicable to all of us—you will not let the repetition of these argu-

ments, each one giving it sincerely for his client, lose its force because it is repeated?

A. No, sir.

Q. Mr. Turkus has made inquiry from the jurors—I don't [fol. 2123] know whether he addressed you or not—he said, "Do you find any fault with the District Attorney accepting testimony of an accomplice?" You are to understand that we are not here to find fault with the District Attorney or with defendants counsel or with defendant. This is not a fault-finding body at all—but the fact that the District Attorney has chosen to accept the testimony of an accomplice is not binding on you—you have got to decide whether you accept that testimony.

A. Yes, sir.

Q. So his position in the matter is wholly unimportant. The District Attorney has also made inquiry about the fact—he said, "Would you fail to do your proper duty in this case?" Of course, there is nothing you could do to the accomplice—did you hear that—you understand there is nothing you could do to the accomplice, in any event, because he is not indicted.

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Do you understand that if the Court shall so charge, and will you accept it, that the question of punishing the accomplice is in nobody's power any more—because the District Attorney, as a matter of law, has given the accomplice immunity in this case and he can no longer try him—will you take that into consideration if his Honor so charges you?

[fol. 2124] Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. If it develops in the future here that that is the fact and the Court says that it is an item for you to consider—as a reward for his testimony, his failure to be indicted, and his complete immunity, when he admitted the commission of this crime—will you take that into consideration in weighing the testimony?

A. I will.

Q. If you find the evidence of any person giving testimony here because of a certain type of treatment he has been receiving at the hands of the authorities which resulted in his falsifying, will you take that into consideration?

A. Yes, sir.

Q. If you find that a man has committed eleven murders, and some committed six, and since then they have been living in a hotel, have taken automobile rides, attended baseball games, had the privilege of seeing their wives, will you take that into consideration?

A. Yes, sir.

Q. In other words, you shall, as a juror, investigate the truth here as you would investigate it in your own case?

A. Yes, sir.

Q. And if, out of that treatment, you find a situation—the treatment of these people—that there is a physical possibility of contact between one another, talking to one [fol. 2125] another, and perhaps the possibility of the concoction of a story, will you take that into consideration?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

(At 1:00 p. m., a recess was taken. Talesmen and jurors admonished as to their demeanor during⁵ recess. Defendants remanded.)

(Recess to 2:00 p. m.)

Afternoon Session—Trial Resumed

(All defendants were represented by counsel)

CHARLES F. WENMELL was examined as to his qualifications to serve as a juror.

By Mr. Climenko:

Q. Mr. Wenmell, I understand that you knew Mr. David Price.

A. Yes.

Q. When is the last time that you saw Mr. Price?

A. About six years ago in the County Court.

Q. Have not talked to him at any time since?

A. No.

Q. At one time you worked for that printing firm at 260 Ninth Avenue?

A. Yes, sir.

Q. As a salesman?

A. That is right.

Q. Have you ever been employed in any other capacity besides the printing business?

A. Well, when I was young, about twenty years old, [fol. 2126]

Q. What was your business?

A. I was in the photographing line as a salesman.

Q. In the last few years you have been engaged from time to time in the investigation of that estate—

A. That is right.

Q. Have you experienced any difficulties in your work along the lines of that investigation?

A. Yes, quite a lot.

Q. Have you, in the course of that investigation been represented by one *one* attorney?

A. He is not working for me; he is working for somebody else.

Q. Have you during the course of that investigation consulted with the Public Administrator in New York County?

A. Not directly.

Q. You had no dealings with him yourself?

A. No, I have not.

Mr. Climenko: That is all.

By Mr. Rosenthal:

Q. Mr. Wennell, you have been in the court considerably during the examination of the other men on the panel, have you not, sir?

A. Yes.

Q. You say that you have had no representation on this estate proposition. Has the person who has representation the same interest that you have? Is that what you mean by it?

A. Yes. It is on the other side of the fence.

[fol. 2127] Q. You mean adverse?

A. Yes.

Q. Have you had any unpleasant experience with any lawyer involved?

A. No, not at all.

Q. The reason why I ask you that, in answer to Mr. Climenko you said that you encountered difficulties,

A. I mean to say by that that I could not get the data I wanted; you understand what I mean?

Q. You mean from the lawyer?

A. No, just my own investigation.

Q. By that you do not mean that any authorities have prevented from procuring the data?

A. No.

Q. You mean that in searching for the information that you would like to have?

A. That is right.

Q. You have been unable to attain any success?

A. To a certain extent, but not complete.

Q. You understand that each of the defendants here are entitled to a separate determination at your hands—you understand that?

A. I do.

Q. And the defendant whom I represent, Mr. Louis Capone, who is seated in the rear there, may, in the wisdom of his attorney, myself, and my associates take the stand in this case. The mere fact that he is a defendant, would that in any wise cause you to brand his testimony as being untrue?

A. No.

Q. You understand that the truth from him is just as [fol. 2128] forceful as the truth from any other source?

A. Yes.

Q. He may also call witnesses in his behalf, and you heard me discuss the question of alibi, or have you heard me?

A. Yes, I have.

Q. You understand that even though a defendant may offer an alibi showing his presence elsewhere at the time the crime was alleged to have been committed, that that does not place any burden or shift the burden over to him to prove his innocence, do you understand that?

A. I understand.

Q. Do you also understand, sir, that if the evidence of the alibi in itself is sufficient to create a reasonable doubt in your mind as to his guilt, that then it would be your duty to resolve that doubt in his favor the same as any other doubt?

A. Yes.

Q. And you find no fault with a proposition of that kind?

A. I do not.

Q. When you were going to school you said you lived in the East New York section?

A. That's correct.

Q. Since your leaving the East New York section have you followed with any interest articles that appeared in the newspapers in respect to that particular section?

A. No, I have not.

Q. Have you, prior to your coming into the box to serve as a jurymen, ever heard of the name of Abie Reles or Levine or Maione?

A. No.

[fol. 2129] Q. So that the name Reles as you sit here is a name that you have not heard prior to the time of your coming into court; is that right?

A. That is right.

Q. I think you said you read the morning *Times* and the afternoon—

A. *World-Telegram*.

Q. Have you read any articles in the *World-Telegram* in respect to any of the defendants at all?

A. As I stated before, before I was on the panel I read something.

Q. Was the subject-matter of what you read anything concerning the defendant himself or merely concerning the alleged crime involved in this case?

A. Concerning the crime itself.

Q. By that do you mean that it merely stated that the defendants are accused of having participated in this killing that took place on such-and-such a day in such-and-such a place?

A. Yes.

Q. But other than that you read nothing at all?

A. No, sir, did not.

Q. So that as you sit here your mind is free and open on the subject at issue; is that correct?

A. Yes.

Q. Do you know Captain Bals?

A. I do not.

Q. Or Lieutenant Osnato?

A. No.

Q. Or Detective Meehan or McDonough or McCarthy or Swift?

A. No.

Q. Have you any immediate relations or close friends [fol. 2130] on the police force?

A. I have not.

Q. Have you any acquaintanceship with any of the Assistant District Attorneys presently employed by Mr. O'Dwyer?

A. I have not.

Q. Have you ever been present at any lectures of any character dealing with crime?

A. I have not.

Q. The mere fact that the defendant may know one or more of the individuals who are called by the District Attorney or may have been in their company at some time, would that in itself prejudice you against the defendant to the extent that you could not be fair and impartial?

A. No, it would not.

Q. On the question of an accomplice, you realize that when an accomplice takes the stand he may be telling the truth concerning what he did; is that right?

A. That is right.

Q. But it is also true that he may be telling a falsehood in so far as other people are concerned; is that right?

A. Yes.

Q. Do you understand that your duties as a jurymen do not so much apply to whether or not the accomplice is telling the truth concerning himself, but as to whether he is telling the truth concerning other people, the defendants, more particularly. Do you understand?

A. Yes.

Q. Do you understand further than that, if the accomplice were to go on and say, "I, the accomplice, fired a [fol. 2131] shot and killed So-and-so Rosen at his candy store on such-and-such a day," and then other policemen go on the stand, or witnesses and say, "We found Rosen in front of the candy store with a bullet in him," and a doctor goes on and says, he was dead as the result of that bullet, that is not the corroboration which the law requires. That may corroborate his statement that the man was shot and killed, but it would not corroborate under the law the statement as to whether these defendants in any wise aided in it. Is that clear to you?

A. Yes.

Q. You understand, then, that in addition to not only one accomplice, but as many as may be called, there must

be other evidence in the case, independent in its nature, which would tend to connect the defendant with the crime. Is that clear to you?

In the event—I do not know whether you heard me discuss it or not—in the event that it should transpire that this so-called other evidence emanates, whether it be in the form of admission or otherwise, from the mouths of individuals who themselves will be forced to admit that they committed numerous crimes of every type for which they have not been punished, for some of which they never will be punished, at least some of them, will you take that as well as any other thing that may develop in the course of their testimony in consideration in determining the motive that they may have in attempting to shift the blame [fol. 2132] or accuse the defendants on trial?

A. I will.

Q. And if you find that the motive is of such a nature as to raise a reasonable doubt in your mind as to whether he is telling the truth when he makes the statement, whatever it may be, would you resolve that doubt in favor of the defendant?

A. I would.

Q. And if that were the only evidence in the case, would you then hesitate to acquit the defendants?

A. I would.

Q. You say you would hesitate. You mean by that that you would not hesitate, don't you?

A. Yes.

Q. Do you understand, sir, that under our law that where testimony appears in a trial, that may be open to two reasonable interpretations, the one interpretation indicating that the man may be guilty and the other interpretation indicating his innocence, that it will be your duty, if instructed by the Court, to disregard the inference that might be drawn of guilt and you would be compelled as a jurymen to accept that one which points toward his innocence; do you understand that? You have no fault to find with that proposition of law?

A. No.

Q. And if the Court were to charge you at the conclusion of the trial that where certain portions of the evidence are susceptible of two interpretations, one of which indicates guilt and the other innocence, it is your duty to disregard

the inference of guilt and accept the one of innocence, you [fol. 2133] would do that, wouldn't you?

A. I would.

Q. You have been asked by Mr. Turkus whether or not you would courageously and without fear or hesitation find a verdict of guilt in the event that you were convinced under the rules of evidence that the defendants were guilty. You were asked would you hesitate or be afraid to bring in a verdict of Not Guilty?

A. I would not.

Q. Have you actually sat on a criminal case?

A. Yes, about four years ago.

Q. In the County Court?

A. I did.

Q. Before what judge?

A. I can't recall. I think it was Judge Fitzgerald.

Q. And there you were charged by the Judge the questions of law; is that right?

A. Yes.

Q. And the case went to determination by the jury?

A. We were deliberating, and the defendants, I guess, in the meantime got cold feet and pleaded to a lesser degree.

Q. I did not intend to ask you anything about the verdict. I mean was it placed in your hands?

A. Yes, it was.

Q. For deliberation?

A. Yes.

Q. But it never came to an actual deliberation?

A. No.

Q. Is that the only time that you sat on a criminal jury?

A. Yes, a criminal case.

Q. You were called at other times but were excused because you knew the lawyer?

A. I have been serving ever since I have been maybe [fol. 2134] twenty-five.

Q. Mostly in civil courts?

A. That is right.

Q. Your only jury service in criminal cases was in this one particular instance where you actually did not find a verdict; is that right?

A. Yes.

Q. You know that it will be your duty, you understand, under certain circumstances whether if it develops in this case that there are a particular type of people who testify

who may or may not be accomplices, it will be your duty under the instructions of the law in that event to determine actually whether they are or not. Is that clear to you?

A. Yes.

Q. Have you heard the discussion which I have had with the other men in respect to the question that the Judge in some instances tell you that you must determine that a man is an accomplice? Have you heard that?

A. Yes.

Q. In other instances the Judge will leave it to your discretion based upon your determination of the evidence. That is clear? Now, merely because the District Attorney may claim that a man is not an accomplice or merely because the Court may pass that question to you to determine, would that fact in any wise influence you in giving a fair determination of what you believe to be his testimony as to whether he is an accomplice or not?

A. No, it would not.

Q. And if you were to determine he was an accomplice, [fol. 2135] would you under the instructions of the Court then seek for the other evidence which is necessary before you would attempt to convict?

A. I would.

Q. Do you know of any reason at all which has not been reached by questioning that would prevent you from being fair and impartial?

A. No at all.

Q. Just one question was called to my attention. Because of your knowledge of Mr. Price and the fact that he went to school with you, have you with any interest followed the cases which he has been interested in in the newspapers or in any of the magazines at all?

A. Not at all.

Q. You are unacquainted with his success as a lawyer?

A. I am.

Mr. Talley: No further questions of this witness.

Mr. Turkus: There are two or three questions I would like to put to the prospective witness that have come about as the result of other questioning.

By Mr. Turkus:

Q. Did you tell Mr. Barshay, Mr. Wennell, that you have not engaged in any occupation or pursuit for the last ten years?

A. Yes, I have done things since the last ten years.

Q. I understood you to say to him you have been unemployed for ten years.

A. Oh, no, no, I did not mean that.

Q. What I gathered was, from his questions, that you said you had been unemployed for ten years and that five [fol. 2136] of these years you had been investigating this lawsuit.

A. About five years now to the present time.

Q. Then you have been unemployed for five years?

A. That is right.

Q. And these five years have been devoted to the investigation of this bank account?

A. That is right, off and on.

Q. Did you find there were any obstacles put in your path in that investigation?

A. Naturally *there* would be.

Q. Were they put in your path by some individual or group of individuals?

A. No.

Q. Some corporation or some inside agency?

A. No.

Q. What were the obstacles?

A. I just could not find the information I wanted to find, that is all.

Q. Did anybody put those obstacles in your path?

A. No, they didn't.

Mr. Turkus: I am going to exercise a peremptory.

The Court: The Court thinks it wise to ask two or three questions of one of the talesmen, but will stop if there is [fol. 2137] any objection. Is that understood?

Mr. Barshay: No objection.

The Court: Mr. Cummings, you are with the Aetna?

Mr. Cummings: General accident.

The Court: Twelve years, did you say?

Mr. Cummings: I did not say before, but I have been with them eighteen years.

The Court: That is the only employment you have had in eighteen years?

Mr. Cummings: That is all.

The Court: That has not included any work as an officer of any kind, has it?

Mr. Cummings: No, sir.

The Court: I mean as a peace officer or private detective?

Mr. Cummings: No.

The Court: And you have never been connected with any police department?

Mr. Cummings: No.

The Court: There is nothing to do then, the panel having been exhausted, but wait until the first court day of next week, when the additional panel will be here, and I trust the jury will be completed in short order.

(To jury) Gentlemen, you may go. Be back on Tuesday morning at ten o'clock. Monday is a holiday.
[fol. 2138] Please do not discuss the case, let nobody talk to you about it; keep your minds open.

Mr. Barshay: We would like to speak to the Court for about two minutes, Judge.

The Court: Come right up. The new panel is being drawn at three o'clock.

(Counsel conferred with the Court at the bench.)

The Court: (to jury) Particularly, gentlemen, do not under any circumstances, either in the court-room or out, discuss the case or visit among yourselves. The jury may go. The defendants are remanded.

The Court's instruction yesterday had application only to Capone being not permitted to have a surplus quantity of poisonous medication in his possession, that is, any lethal or deadly quantity. It involved no suspicion that he contemplated suicide, as was implied by what was stated by one of the counsel in court, but in ordinary common sense no man should be permitted to be tried on a criminal charge having in his possession unnecessarily, for the purpose of medication, sufficient quantity of poison to destroy life. Neither in this nor in any other case can that be permitted, but apparently the impression has gone forth that the Court has countermanded the requirement of the physician as to this defendant's medication. That is untrue. The following [fol. 2139] is the language of the Court's direction, quoting from the record: "The defendant Capone shall not

be permitted to have on his person at any one time during the progress of this trial any more medication than is necessary for his present needs, that no lethal quantity shall be permitted." The word "lethal" means deadly, destructive of human life. This does not authorize any court attendant or any member of the court staff to take away medication. That is beyond the Court's power. The Court directed that Dr. Nash communicate with the prison physician who gave this excessive quantity of poisonous medicine to this defendant and to state the Court's instructions in regard to limiting the defendant's possession to that required for present needs as medication.

Another thing for the record, because of the Court's ruling at one time, interrupting the examination of a talesman, that no prisoner shall be allowed to have conversation with other people in the court-room, this does not apply to conference with counsel, but was because one of the prisoners was endeavoring to hold interview with a gentleman in the press box during court session, which cannot be permitted in any court during any trial.

(Adjourned to Tuesday, October 14, 1941, at 10:00 A. M.)

[fol. 2140]

Brooklyn, N. Y., October 14, 1941.

Trial Resumed

(Excuses of talesmen were heard—those drawn from the additional panel.)

(By direction of the Court, three talesmen were seated in the box: Harry M. Ryan, No. 3028; Alfred Elfendein, No. 3038; William J. Kochler, No. 3054.)

HARRY M. RYAN, a talesman, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. I will address the questions through you in a tone audible to the other jurors, so they may remember the questions when it comes their turn and answer, and we will not waste time. We are anxious to expedite the jury selection if we can.

You understand that this is a charge of murder in the first degree?

A. Yes, sir.

Q. Is there anything about the nature of the charge of murder in the first degree which would impair your ability to serve as a fair and impartial juror?

A. No.

Q. May I proceed with the understanding you have no scruple against capital punishment, either conscientious or otherwise?

A. No, sir.

[fol. 2141] Q. You are listed on the trestle board as living at 3801 Eighteenth Avenue?

A. Yes, sir.

Q. Is that in the Bensonhurst section of Brooklyn?

A. No, sir.

Q. Have you lived in that district for a number of years?

A. Twelve years.

Q. You are listed on the trestle board as a clerk by vocation, without any specific occupation listed.

A. New York Telephone Company.

Q. Have you been there for a number of years?

A. Since 1924.

Q. May I go along with the understanding that you have no connection with anyone in the garment or clothing trade or clothing industry in Manhattan?

A. Yes, sir.

Q. No connection at all in any form with anyone in the Brownsville or East New York sections of Brooklyn?

A. No, sir.

Q. Or on the Brooklyn waterfront?

A. No, sir.

Q. Do you know any official of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Do you know any official of any trucking or teamsters' union?

A. No, sir.

Q. And, specifically, any official connected with the clothing trucking industry or anyone interested in the trucking of clothes after they have been cut and after they have been sewed into garments?

A. No, sir.

[fol. 2142] Q. The defendants at the bar, Buchalter, Capone, and Weiss, are represented by nine lawyers. When I say nine, I do not find any fault with the number of counsel, you understand that?

A. Yes, sir.

Q. They can have as many as they desire, and nobody can find any fault with that, that is up to them. Buchalter is represented by former Assistant District Attorney Hyman Barshay, former Assistant United States Attorney Bertram Wegman, and his partner, Mr. Jesse Climenko. Do you know any of those three who represent Buchalter?

A. Only, as I said before, I was a juror in a case in which Mr. Barshay was.

Q. Was that a case in this court?

A. Yes, sir.

Q. How many years ago was that?

A. Quite a few, about three or four?

Q. Was it a capital case?

A. Yes, sir.

Q. Did the case go to a conclusion—I mean did the Judge charge the jury on the law?

A. Yes, sir.

Q. With respect to the other counsel who represent the remaining defendants, Weiss is represented by former General Sessions Judge Alfred Talley, former Assistant District Attorney James I. Cuff, and former Assistant United States Attorney Murray Kriendler; do you know any of those three?

A. No.

Q. Capone is represented by Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Emanuel Rosenberg. Do you [fol. 2143] know any of those?

A. No, sir.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. I know several lawyers.

Q. Are they specialists in criminal cases?

A. I don't know at the present time. I know some members of the District Attorney's office.

Q. Do you know Judge O'Dwyer intimately, personally?

A. No, sir.

Q. Do you know some members of his staff?

A. Yes, sir.

Q. Who do you know?

A. I know one, Mr. Rooney, and I know Mr. Foley. I spent two weeks vacation with Mr. Rooney.

Q. You know Mr. Barshay, having seen him as a prosecutor?

A. Yes, sir.

Q. And you know various Assistants in our Office?

A. Yes, sir.

Q. None of whom are personally connected with this case. Is there anything about your knowledge of these men which will preclude you from doing justice in this case by your verdict?

A. No, sir.

Q. Having served prior on a criminal case, you received the instructions of law from the Judge?

A. Yes, sir.

Q. Do you remember who the judge was?

A. Several of them.

Q. At any rate, you received instructions on the doctrine of reasonable doubt and the presumption of innocence, and as to all the legal rights that the defendant has on the trial [fol. 2144] of a criminal case?

A. Yes, sir.

Q. In this case you apply it to the facts in the case?

A. Yes, sir.

Q. If selected as a juror you must take the law implicitly from Judge Taylor and apply that to the facts in this case. If accepted will you do that?

A. Yes, sir.

Q. It has been said in the questioning of the other prospective talesmen by one of counsel for the defendant Buchalter that he has been heretofore convicted of crimes and is presently serving a long jail term for these offenses, as a penalty for the commission of these crimes. Would you relax or deviate from a proper result in this murder charge simply because he has been convicted of other crimes which he has committed?

A. No, sir.

Q. It has been properly pointed out by one of the attorneys representing Capone that the defendants at the bar are here to meet one charge, the charge in this indictment, which charges the killing of a man named Rosen, and by the same token the duty of the District Attorney is only

that and no more, to establish guilt beyond a reasonable doubt of the charge in the indictment; do you understand that?

A. Yes, sir.

Q. If selected, will you devote your mental faculties to ascertaining whether these defendants at the bar, under the rules of law as given by the Judge, are guilty of murder in the first degree, or are they innocent of the crime charged? [fol. 2145]

A. Yes, sir.

Q. Part of the State's case will rest upon the testimony of accomplices. I don't know whether or not you had any discussion in the prior case in which you served on accomplice testimony. Now let me explain at the outset that an accomplice is one who was one of the perpetrators of the crime. Does that make it clear?

A. Yes, sir.

Q. Accomplice testimony has certain rules of law. For example, the Judge will charge you that the testimony of such an individual must be accepted with great caution.

A. Yes, sir.

Q. If accepted, will you apply that rule to accomplice witnesses?

A. Yes, sir.

Q. Do you find any fault with the District Attorney of the county, Judge O'Dwyer, or with the prosecution of an indictment wherein the prosecutor, in order to solve the case, breaks the case from the inside, accepts the testimony of an accomplice, and uses it against the other perpetrators of the crime?

Mr. Talley: I object to the form of the question.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Do you find any fault with either the prosecution or the prosecutor in doing that?

A. No, sir.

The Court: You understand that the question does not [fol. 2146] imply that the man was a principal, but that he may explain himself?

Q. I do not mean to imply by any question to have you prejudge the case that this Rosen murder case has been broken from the inside by my question—that is your job. When you hear the evidence we give you in this court

it will be for you, as jurors, to say whether the District Attorney broke this case from the inside and has the guilty culprits at the bar of justice. That is your job.

A. Yes, sir.

Q. In applying this rule which the Judge gives you as to accomplice testimony, and necessarily when you apply the rule you have to use every piece of information that can be gathered in the court-room as to the believability of an accomplice.

A. Yes, sir.

Q. For example, as you can readily imagine, himself being one of the perpetrators of the murder, has a background that is not so good. In other words, he may have a past criminal record—he may have associated with criminals all his life and may have committed other crimes, and there may be various things brought out to attack his believability. Will you keep uppermost in your mind that whatever test you apply to an accomplice witness is done for the sole purpose of ascertaining is the accomplice witness telling the truth about the defendants and himself and any other combination or group participating in the crime; is that clear?

[fol. 2147] A. Yes, sir.

Q. No matter what test you put to the believability of the accomplice, no matter what rules of human guidance to use to find out what is going on in this man's mind, is he telling the truth—that will be uppermost in your mind—what you want to know is does he speak the truth with regard to this murder and the connection of these defendants with him in the commission of the crime.

A. Yes, sir.

Q. As a matter of fact, you may detest him—that is the one test to apply: Is he telling the truth? Not only about himself, but about the men on trial: is that clear?

A. Yes, sir.

Q. Will you devote your faculties to that, if selected as a juror, to find that out?

A. Yes, sir.

By the Court:

Q. What line of business did you say you were in?

A. The New York Telephone Company.

Q. How many years?

A. Since 1924—seventeen years.

By Mr. Turkus:

Q. Having had experience in another case, you have had the experience of reasoning out problems with other jurors in the case?

A. Yes, sir.

Q. In that case in which you sat you came to a conclusion?

A. Yes, sir.

Q. Will you, if accepted as a juror in this case, talk the [fol. 2148] matter over sensibly and logically with your fellow jurors in the case?

A. Yes, sir.

Q. Will you endeavor by your verdict to do justice in this case?

A. Yes, sir.

Q. With respect to the evidence in the case, there may be some discussion by the defense lawyers, and if they do not touch it, there will be by Judge Taylor in his instructions to the jury, about the allocation of evidence. If you receive certain rules from the Judge in regard to applying evidence as against the defendant to which it belongs, you will see obviously from certain instructions that some part of the evidence may apply to a single defendant. If you see that is obvious, from the instructions of law, will you apply that evidence to that particular defendant?

A. Yes, sir.

Q. And from other evidence in the case—You understand that the prosecution is not built around one witness, there are a series of witnesses which establish this case, and you will see from certain parts of the testimony very clearly and obviously that portions of the testimony will apply to all three of the defendants. Some things will apply to two, some things to one. In the case where it applies to one will you apply it to one?

A. Yes, sir.

Q. Where it applies to two, will you apply it against the two against whom that evidence is allocated?

A. Yes, sir.

[fol. 2149] Q. When it applies to all three, will you apply it to them?

A. Yes, sir.

Q. Will you use common sense and understanding to find

out whether what the witnesses say in this court of justice as against these men on trial is true?

A. Yes, sir.

Q. Will you devote your mental faculties to find out whether, under the rules of evidence, the guilt of the defendants has been established beyond a reasonable doubt?

A. Yes, sir.

Q. And whether or not they are innocent?

A. Yes, sir.

Q. After you have heard all the evidence and you are satisfied beyond a reasonable doubt that there are three guilty men at this bar of justice, Buchalter, Capone, and Weiss, will you say so by your verdict?

A. Yes, sir.

Q. Will you say that fearlessly and courageously?

A. Yes, sir.

Q. And without any hesitation?

A. Yes, sir.

ALFRED ELPENDEIN, No. 3038, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Do you live in Flatbush?

A. Yes, sir.

Q. Have you lived in Flatbush for a number of years?

A. Quite a few. Two years on Ocean Avenue.

Q. What number on Ocean Avenue?

A. 485.

[fol. 2150] Q. Is that near Beverly Road?

A. No, sir, near Caton.

Q. 771, what street is that?

A. Between H and G.

Q. You are listed on the trestle board as a manufacturer. What is the product?

A. At that time I was manufacturing—I am a general contractor now.

Q. What were you manufacturing when you were manufacturing?

A. Paints.

Q. Where was your place of business when you were manufacturing paints?

A. 47 Sheriff Street.

Q. How long were you there?

A. Quite a time.

Q. How many years ago?

A. Eight years ago.

Q. Is that Sheriff and Willett?

A. Sheriff and Delancy.

Q. You say you are a general contractor now?

A. Yes, sir.

Q. Is that of paints?

A. No, sir, general contractor.

Q. Do you do construction work?

A. Yes, sir.

Q. Have you been on the lower East Side—how many years were you there?

A. About nine years.

Q. Did your business bring you in contact with customers in Brownsville or the East New York section of Brooklyn?

A. Yes.

Q. There are various names you may or may not be familiar with as a result of that. While you were engaged in this business did the name of Harry (Pittsburgh Phil) Strauss mean anything to you?

A. No, sir.

Q. Or Martin Goldstein?

A. No, sir.

[fol. 2151] Q. Or Jake the Bum?

A. I have heard of him.

Q. Or Whitey Krakower?

A. I heard the name.

Q. Is the name Lepke familiar to you?

A. No, sir.

Q. Or Gurrah?

A. No, sir, outside of what I have read in the paper about him.

Q. The names of the various persons that were in the painting industry, are those names familiar to you?

A. Yes, sir.

Q. Did you have any contact in the painting industry with union officials?

A. Occasionally I did.

Q. Was one of them Welner?

A. No, sir.

Q. Who are the officials you came in contact with?

A. That is quite a while ago. There was one there but I do not remember the name—he was a delegate of a local.

Q. Since your name appeared on this jury panel, specifically since you received your notice, did anybody speak to you about the case?

A. No, sir.

Q. Did you maintain any business contact in Brownsville, or East New York?

A. Yes, sir.

Q. That would be occasioned by your delivering paint in that area?

A. Yes, sir.

Q. Did you have many accounts in Brownsville?

A. Yes, sir.

Q. How many years ago was that?

A. I should say six or seven years.

Q. Are you familiar with the corner of Saratoga and Livonia?

A. Yes.

[fol. 2152] Q. And Skillman and Livonia?

A. Yes, sir.

Q. Were you familiar with the candy store at the corner of Saratoga and Livonia Avenue run by a woman sometimes called Midnight Rose?

A. No, sir, I never went in there. I believe I have a faint recollection of the store.

Q. While you were in the Brownsville and East New York territory, in contact with your customers, did you hear any discussion where names were mentioned?

A. No, sir.

By the Court:

Q. You were a paint manufacturer?

A. Yes, sir.

Q. Was that a factory or a store?

A. A factory; we manufactured on Sheriff Street.

Q. Near where?

A. The old Robert Hoe Building.

Q. You are now living in the Fisk Terrace section for how long?

A. Two years.

By Mr. Turkus:

Q. Mr. Englander lives there?

A. Yes, sir.

Q. Do you belong to local associations?

A. I do.

Q. Are you active?

A. No, sir, not very.

Q. These things were never up for discussion?

A. No, sir.

Q. There were no talks about it?

A. No, sir.

Q. You have no prejudice against capital punishment?

A. No, sir.

Q. Is there anything familiar to the name of Mendy Weiss?

A. I have heard the name mentioned.

[fol. 2153] Q. Is there anything familiar about the name of Sam Schurum Katz?

A. No, sir.

Q. Or Ben Siegel?

A. No, sir.

Q. While you were in the paint business did you have any union difficulties?

A. At times I did.

By the Court:

Q. Do you know a Mr. Phair, Joe Phair; he lives at your corner.

A. No, sir.

Q. P-h-a-i-r?

A. No, sir, I don't think I do.

Q. I ask you because he has been for several times foreman of the Grand Jury here.

A. No, sir.

Q. That is the corner of Glenwood Road and 17th.

A. Yes, sir.

By Mr. Turkus:

Q. Was that difficulty in connection with any teamsters' union or delivery union, trucking union?

A. No, sir.

Q. With the painters' union?

A. Yes, sir, indirectly, to an extent.

Q. At this time, when you had difficulty with these conditions, were you visited by any representative of the union?

A. No, sir.

Q. The ironing out of the difficulty depended upon somebody else?

A. Yes, sir.

Q. As a general contractor do you have any connection in the Brownsville or the East New York section of Brooklyn?

A. No, sir.

Q. Did your painting business bring you in contact with [fol. 2154] people on the Brooklyn waterfront?

A. No, sir.

Q. Do you know any persons on the Brooklyn waterfront or have you had any contact with them?

A. No, sir.

Q. Is the name of Albert Anastasio familiar to you?

A. No, sir.

Q. Do you know anybody engaged in the clothing trucking business, that is, the transportation of clothing?

A. I do not.

Q. Or any manufacturer of men's or ladies' clothing, either in the clothing district or the garment district?

A. I do not.

Q. I mean in Manhattan.

A. No, sir.

Q. Have you had any such contact in the past?

A. No, sir.

Q. As a result of having been in the painting business, as you have described, on the lower East Side, and your familiarity with certain names, and your contacts in Brownsville and East New York, is your mind free and open in this case?

A. Yes, sir.

Q. Have you heretofore served as a juror in any type of case?

A. I have.

Q. Has it been a criminal case?

A. Yes, sir.

Q. Was it in this court?

A. Yes, sir, the County Court.

Q. Do you recall who the Judge was?

A. Judge O'Dwyer.

Q. That must have been about two years ago?

A. Yes, sir, I kept no record.

[fol. 2155] Q. You are not supposed to tell us the case, but were any of the lawyers who are in the court-room now counsel in that case?

A. No, sir.

Q. Did you say it was a capital case?

A. A murder case, yes.

Q. Do you know any of the nine lawyers whose names I stated to Mr. Ryan when I was questioning him?

A. No, sir.

Q. Do you know anyone employed in their law offices?

A. No, sir.

Q. Do you know any lawyer who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you know any official of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is the name of Murray Weinstein or Samuel Katz connected with the Clothing Cutters Union, Local No. 4, affiliated with the Amalgamated Clothing Workers of America, familiar to you?

A. No, sir.

Q. Is the name of Bruno Belia, an organizer for the Amalgamated, familiar to you?

A. No, sir.

Q. Or Salvatore Marazzino?

A. No, sir.

Q. Did you ever hear of Philip Orlofsky, one-time manager of Local No. 4 of the Cutters Union?

A. No, sir.

Q. Is the name of Max Silverman or Wolfie Goldis familiar to you?

A. No, sir.

Q. Did you have any contact with people in Sea Gate?

[fol. 2156] A. No, sir, except one party whom I do know.

Q. What business is that person in?

A. He is a Clerk of the court.

Q. One of our courts in this city?

A. Yes, sir.

Q. Is there anything familiar to the name of William or Willie Alberts, a one-time bondsman?

A. No, sir.

Q. Or Emanuel Buchalter?

A. No, sir.

Q. Or Philip Kowas?

A. No, sir.

Q. Did you ever hear the name of Bellanca or Tosca?

A. No, sir.

Q. Or Terry Burns or Abie Slabo?

A. No, sir.

Q. Do you know David Price, a lawyer, a member of the bar?

A. I heard him try a case.

Q. Was that the case before Judge O'Dwyer?

A. No, sir.

Q. A different case?

A. Yes, sir.

Q. Were you a juror in that case?

A. Yes, sir.

Q. You have served more than once on a criminal case?

A. Yes, sir.

Q. Do you recall how many years ago the case was tried in which Mr. Price was counsel?

A. About five years ago.

Q. Was that a murder case?

A. No, sir.

Q. Do you know Mr. William Kleinman, who is now a Captain in the United States Army, at one time associated as a partner with Mr. Price in the practice of the law?

A. I was in the case that he was defending himself.

[fol. 2157.] Q. That is the only acquaintanceship you have had with Kleinman, was seeing him in court?

A. That is right.

Q. Do you know Judge O'Dwyer, the District Attorney of the county?

A. No, sir, I don't know him socially.

Q. You have heard of him?

A. Yes, sir.

Q. You were a juror in the court when he was a judge?

A. Yes, sir.

Q. That question is intended to find out whether somebody is an intimate friend of Judge O'Dwyer and goes out with him socially—do you know any member of his staff?

A. I know some of Judge O'Dwyer's staff from seeing them in court.

Q. Do you know any of them socially?

A. No, sir.

Q. Specifically, do you know Assistant District Attorney Klein?

A. No, sir.

Q. Or Louis Joseph, who is sitting here with me?

A. Outside of seeing him in court.

Q. My name is Turkus. I don't believe you know me.

A. No.

Q. Did any of these cases in which you served as a juror have, as a part of the testimony, the testimony of accomplices?

A. I think they did.

Q. Do you understand that an accomplice is one who himself is one of the perpetrators of a crime?

A. Yes, sir.

Q. In this case part of the testimony will come from just that type of an individual, one of the perpetrators of the crime charged in this indictment. The prosecutor, [fol. 2158] Judge O'Dwyer, in order to solve this case and break the case from the inside has accepted testimony of accomplices.

Mr. Cuff: I object to the form of the question.

The Court: Alleged accomplices. Reframe your question.

Q. There will be testimony from an individual in this court known under the law as an accomplice. An accomplice is himself one who has participated in the commission of the crime, do you understand?

A. Yes, sir.

Q. What I want to know is, do you find any fault with the prosecutor of a county who, in order to solve a murder case, accepts testimony of one who is an accomplice, and uses it against the defendants on trial?

Mr. Barshay: I object to the question.

The Court: "Who is an alleged accomplice." It has to be established that he was an accomplice.

Q. We will include the word "alleged." Do you have any fault to find with any such prosecution?

A. No, sir.

Q. There will be certain rules or tests which the Judge will give you with respect to the believability or credibility, to be applied to the testimony of accomplices. Do you follow me?

A. Yes, sir.

Q. Will you apply the tests that the Judge gives you to be applied to such individual?

A. Yes, sir.

Q. Will you keep uppermost in your mind that purpose of applying all of these tests to an accomplice witness, [fol. 2159] every rule that the law says should be applied and every rule that your mind and common sense tells you should be applied, to weigh the believability of the accomplice, to find out does the accomplice tell the truth not only about himself as a participant in the crime, but about these defendants and their participation in this group or combination killing; do you understand that?

A. Yes, sir.

Q. Will you, if accepted as a juror, devote your mental faculties to finding out if you heard the proof with respect to these defendants and their group participation in the Rosen murder?

A. Yes, sir.

Q. In all legal cases there are rules of evidence. Part of the evidence in the case may apply and emanate from one source only against one defendant, some may apply against the three, some may apply against two; is that clear?

A. Yes, sir.

Q. Will you take the rules given by the Judge and apply them with common sense and understanding to weigh that portion of the allocating evidence in the case?

A. Yes, sir.

Q. Where you see it fits against one, will you apply it against that one?

A. Yes, sir.

Q. And where you see it applies against more than one, will you apply it against either the two or three against whom it does apply after listening to the instructions of the Judge?

A. Yes, sir.

[fol. 2160] Q. It has been brought out by one of the lawyers for Buchalter that he has been heretofore convicted of crimes and is presently serving a long jail term as a penalty for the commission of those crimes.

A. Yes, sir.

Q. I want to know, in view of the fact he is presently in jail for past offenses and other crimes he has committed, would you relax from your duty as a juror in this criminal charge because he is in jail for having committed other offenses, or would you deviate from the proper result in this case?

A. No, sir.

Q. It has been properly brought out by one of the defendants for Capone that the defendants are here to meet only one charge, the one charge in the indictment.

A. Yes, sir.

Q. By the same token, the duty of the District Attorney only goes that far too, to establish guilt beyond a reasonable doubt on this charge in the indictment and that alone.

A. Yes, sir.

Q. Will you keep uppermost in your mind, if selected as a juror, that all the legal tests the Judge gives you to apply to a witness, and all the common sense rules you have in your own mind, and all the things you have learned in your past experience, will all be devoted to find out whether, under the rules of evidence, the guilt of the defendants has been established, or whether they are innocent?

Mr. Barshay: I object to the form of the question. It [fol. 2161] leaves out "beyond a reasonable doubt."

The Court: It has to be proved beyond a reasonable doubt.

Q. You understand the prosecutor does not say he will establish guilt beyond any hope or any surmise—his obligation is—the obligation he undertakes in this case is to establish guilt beyond a reasonable doubt. If you are satisfied that guilt is established beyond a reasonable doubt, will you reflect that in your verdict?

A. Yes, sir.

Q. Coming back to the point where we had objection from counsel, I said to you that no matter what the rules are that the Judge gives you to apply to a witness in a case, no matter what common sense and other understanding you apply to all the witnesses in the case, that uppermost in your mind there has to be determined one fact—Are these defendants, Buchalter, Capone, and Weiss, guilty of murder in the first degree, and has that been established to

your satisfaction beyond a reasonable doubt, or are they innocent?

A. Yes, sir.

Q. Will you undertake that job, if selected?

A. Yes, sir.

Q. And find that out?

A. Yes, sir.

Q. And is there any reason why, if your mind is satisfied beyond a reasonable doubt that there are three guilty men at this bar of justice, Capone, Buchalter and Weiss, is there any reason why you cannot say so fearlessly and without [fol. 2162] out hesitation?

A. No, sir.

Q. Is there anything that I have failed to make clear to you in my questioning which goes to your ability to sit in this court as a juror and do justice with this case?

A. No.

WILLIAM J. KOEHLER, No. 3054, was then interrogated as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Koehler, you are listed as living at 817 Avenue R.

A. Yes, sir.

Q. And your business is insurance appraiser?

A. Yes, sir.

Q. Marine insurance would refer to shipping?

A. No, sir, cargoes.

Q. You appraise the value of a cargo?

A. Only when damaged.

Q. Does your work bring you in contact with lawyers?

A. No, sir.

Q. I don't say that with any disparagement of the legal profession, because we are all lawyers. I mean I want to find out whether there may be some nature of friendship you may have in the case.

A. No, sir.

Q. You heard me mention the names of nine lawyers?

A. Yes, sir.

Q. Do you know any of the nine?

A. No, sir.

Q. Do you know anybody connected in their law offices?
[fol. 2163] A. No, sir.

Q. Do you know any lawyer who specializes in the defense of criminal cases?

A. No, sir.

Q. Does that hold true with respect to the District Attorney? Do you know Judge O'Dwyer or any member of his staff?

A. I have seen Cohen try a case.

Q. Is that Charlie or John?

A. I don't know that.

Q. At any rate, having been a juror in the case, that does not affect your ability to do justice in this case?

A. No, sir.

Q. Where you live in Flatbush, that is between Coney Island Avenue and Ocean Parkway —

By the Court:

Q. You are a block behind the motion picture theatre on Kings Highway?

A. Yes, sir.

By Mr. Turkus:

Q. Have you lived in that district for a number of years?

A. Twenty-one years.

Q. May I go along hurriedly with you with respect to any connection with the Amalgamated Clothing Workers of America, do you know anybody connected with that organization?

A. No, sir.

Q. Or anybody in the clothing or garment industry?

A. No, sir.

Q. Or clothing truckers?

A. Trucking, but not clothing.

Q. Would the truckers be United States Trucking Company [fol. 2164] or one of those large trucking outfits?

A. Flour.

Q. Is the name of Max Silverman familiar to you?

A. No, sir.

Q. Or Goldis, Wolfie Goldis?

A. No, sir.

Q. What has been your experience with the trucking?

A. We had a warehouse.

Q. That was the only connection you had with flour trucking?

A. Yes, sir.

Q. You had more than that?

A. Yes, sir.

Q. Did you testify against them?

A. No, no, I was called on the case, but they excused me. I happened to know something about it.

Q. You knew something about the flour trucking?

A. Yes, sir.

Q. When you were called on the case in which this industry was involved, you were excused?

A. Yes, sir.

Q. That was the limit of your connection with the matter?

A. Yes, sir; I did not know them socially.

Q. He is not a friend of yours?

A. No, sir.

Q. I am sorry if I did not make myself clear, but I understood you—

By the Court:

Q. Do you belong to any local civic organization?

A. No, sir.

Q. That particular place where you live, that is part of the Homecrest development of twenty years ago?

A. Yes, sir.

Q. That is not a local organization?

A. I don't belong to any.

[fol. 2165]

By Mr. Turkus:

Q. Is the name of Buchalter, Emanuel Buchalter, familiar to you?

A. Only what I have seen in the press.

Q. Is the name of Philip Kowas familiar to you?

A. No, sir.

Q. Are you in sympathy with the enforcement of the penal law of the State?

A. Yes, sir.

Q. Mr. Koehler, if accepted, will you give the defendants every legal right that the Judge tells you in his charge they should have?

A. Yes, sir.

Q. With respect to accomplices, have you any bias or prejudice against either the prosecutor of the county or against the prosecution of an indictment wherein a part of the testimony emanates or springs from accomplices in the case?

A. No, sir.

Q. Will you, Mr. Koehler, if accepted as a juror, devote your mental faculties and apply all the tests the Judge gives you to the believability of the accomplice?

A. Yes, sir.

Q. Will you use the every-day common sense and business experience you have in weighing the believability, not only of the accomplice but of every witness in the case?

A. Yes, sir.

Q. Would you keep uppermost in your mind that common sense and reason, to apply the test to the accomplices or to any witness as a matter of fact, to find out does he tell the truth?

A. Yes, sir.

Will you, if accepted as a juror, find out whether the [fol. 2166] accomplice speaks the truth about the defendants and their criminal participation in the crime charged?

A. Yes, sir.

Q. And will you devote your mental faculties to see whether or not the accomplice speaks the truth about the group participation of the defendants and himself in the commission of this crime?

A. Yes, sir.

Q. As I pointed out to Mr. Ryan and his associates, it has been brought out by one of the attorneys for Buchalter that his client has been convicted of other crimes and is serving now a jail term for this offense? Would you in this case relax your duty as a juror or devise from a proper result in the case simply because he is paying the penalty for other crimes?

A. No, sir.

Q. Will you decide whether he is guilty of murder in the first degree, he and all these defendants in the case with him, upon the evidence you hear in court?

A. Yes, sir.

Q. As has been properly brought out, the obligation of the defendants is that of meeting the crime charged in this indictment, the Rosen killing.

A. Yes, sir.

Q. That is their obligation. Do you understand the obligation of the District Attorney is only co-extensive and no more, to establish guilt beyond a reasonable doubt on this indictment.

A. Yes.

Q. Will you take every legal rule the Judge gives you that benefits the defendants and give them the benefit of it? [fol. 2167] A. Yes, sir.

Q. After you have given them every benefit the law of the land says they should have, and after you have heard all the evidence, if your conscience is satisfied beyond a reasonable doubt that three of them are guilty of murder in the first degree, will you say that by your verdict?

A. Yes, sir.

Q. Without fear or hesitation?

A. Yes, sir.

By Mr. Barshay:

Q. Mr. Ryan, did you read about this case in any newspaper?

A. Yes, sir.

Q. May I know in what newspaper?

A. Principally the *Brooklyn Eagle*.

Q. Did you read about it often?

A. I did.

Q. Did you read about the defendants?

A. Well, I must have read about the defendants when I read about the case, yes, sir.

Q. By virtue of that reading, have you gained some impression or opinion?

A. I have.

Q. Is that impression or opinion detrimental to the defendants?

A. Yes, sir.

Q. I take it that opinion goes to the guilt or innocence of the defendants or any of them?

A. I would not say that.

Q. Does it prejudice you against them?

A. Not at all, I have not heard the evidence.

[fol. 2168] Q. Is it a strong impression that you gained by virtue of reading the *Eagle*?

A. Yes, sir.

Q. Is it an impression which will have to have some evidence to remove it?

A. I think it will.

Q. You will need evidence to remove that impression?

A. Yes, sir.

Q. And if no evidence is forthcoming to remove that impression, it will still remain with you?

A. That is true.

Q. Is it presently with you?

A. That is right.

Q. Having had experience as juror, and Mr. Turkus having made certain statements which are in accord with the law, that the defendants need not prove their innocence, you, in reply to my question, still say that unless evidence was forthcoming here, the impression which you have will remain?

A. Yes, sir.

Q. Well, sir, I take it then that the impression which you have would affect the verdict in this case?

A. I think it would, because I followed the case very closely in the newspaper until about a week ago.

Q. And you say unless it was forthcoming from the defendants your mind would be influenced to the extent that you would not be able to render an impartial verdict?

A. I don't think I could.

Mr. Barshay: I challenge for cause.

The Court: Try the challenge.

[fol. 2469] HARRY M. RYAN, No. 3028, residing at 3801 Eighteenth Avenue, Brooklyn, New York, was then sworn on the challenge.

By Mr. Barshay:

Q. Now that you are under oath, would you give the same answers to the questions that you gave when you were in the box, if I asked them in the same way?

A. Yes, sir.

By Mr. Rosenthal:

Q. Just to get your answer definitely: It is impossible to give a fair and impartial verdict in this case; is that right?

A. That is right.

By Mr. Turkus:

Q. I am going to make this very short, because I think we can understand it very, very clearly. The obligation of the prosecutor is to establish guilt beyond a reasonable doubt of the men on trial, upon evidence produced in court.

A. Yes, sir.

Q. Of course, by no stretch of the imagination could any prosecutor take a newspaper and throw it into the lap of a jury, and say, "Here, convict on that newspaper story."

A. I understand.

Q. The prosecutor has to bring witnesses in court to establish guilt by believable evidence beyond a reasonable doubt?

A. Yes, sir.

Q. You have read certain newspaper articles in the *Eagle*?

[fol. 2170] A. Yes, sir.

Q. Have those articles been written up in connection with the merits of the Rosen case?

Mr. Barshay: Objected to as a conclusion.

Mr. Turkus: Question withdrawn.

Q. Have those articles been written as to alleged facts in the Rosen case?

Mr. Rosenthal: I object. This is not a trial; this is a challenge.

The Court: Objection overruled. This particular case.

A. This particular case is the one I am referring to, as the one I followed in the newspaper for about a month, I believe.

The Court: Challenge sustained.

ALFRED ELFENDEIN, No. 3038, was then examined as to his qualifications to serve as a juror.

By Mr. Barshay:

Q. Did you read about this case?

A. Yes, sir, I did.

Q. Did you read it in any particular newspaper or group of newspapers?

A. A newspaper.

Q. Did you read it for any length of time?

A. I have—I have an opinion.

Q. Did you read the Daily Mirror?

A. No.

Q. In the Daily Mirror did you read any instalments [fol. 2171] about this case?

A. I believe I did.

Q. Did you read more than one instalment?

A. Yes, sir.

Q. Did you notice at the end of each article there was some statement about there being a further one?

A. Yes, sir.

Q. Were you impressed by those articles?

A. To an extent I was.

Q. Did you read something about this case in other periodicals?

A. Yes, sir.

Q. Were you impressed by those?

A. Yes, sir.

Q. Did it concern this case?

A. It did.

Q. Did you gain any impression by virtue of that reading?

A. It gave me a thought.

Q. You describe it as a thought?

A. Yes, sir.

Q. Is that thought with you now?

A. I would say yes.

Q. Is it prejudicial to the defendants?

A. No, sir.

Q. Is it in favor of the defendants?

A. I would not say it was.

Q. Is it detrimental to the defendants?

A. No, sir.

Q. Did you believe the accuracy of what you read?

A. What is that?

Q. Did you accept the truth of what you read in this paper mentioned or any other papers?

A. Did I accept it as the truth?

Q. Yes.

A. I don't think I did.

Q. When you say, "I don't think," does that imply a [fol. 2172] doubt in your mind?

A. That is right.

Q. In other words, you don't know whether it is true and you don't know whether it is untrue?

A. That is right.

Q. And yet it left a thought with you?

A. Yes.

Q. Is that thought detrimental in any way to the defendants?

A. I do not think it is.

Q. Can you be sure about it, whether it is detrimental or not?

A. If I would be on the jury I would decide that—naturally, I read the paper.

Q. Just speak a little louder.

A. I read the paper because it was interesting reading.

Q. You wanted to maintain an interest, didn't you, and read further?

A. Yes, sir.

Q. I take it that you completed every instalment or most of the instalments that were published in the paper.

A. Yes, sir.

Q. I take it that the instalments included the names of some of the defendants?

A. Yes, sir.

Q. And is it a fact that you gained some thought which sufficiently interested you with respect to any of the defendants to get the next day's paper and read it carefully?

A. I would not say that.

Q. Maybe the following day, skip a day?

A. Whenever I did have the paper I would pick up the article and read.

Q. Didn't that leave an impression with you which is detrimental to the defendants or any of them?

[fol. 2173] A. I would not say it did.

Q. But you cannot say it did not, can you?

A. No, sir.

Q. Your mind is not made up on it?

A. No, sir.

Q. Would it require some evidence here to remove whatever impression or thought or idea you had?

A. Yes, sir.

Q. Would you expect that to come from the defendants?

A. As far as my impression right now of what I read in the newspaper, I have not come to any conclusion. Now, that is as far as I will say.

Q. But despite that you said you would accept some evidence to remove the thought, no matter what its degree may be.

A. Evidence in deciding the case one way or another, but that particularly what is in my mind.

Q. Would you expect the evidence to come forth from the defendants or someone on their behalf?

A. Naturally.

Q. That is your understanding, naturally you would expect it to come forth from the defendants or someone in their behalf, isn't that so?

A. Yes, sir.

Q. You are quite conscious of the principle of law that the defendants need not prove themselves innocent?

A. Yes, sir.

Q. And you are quite conscious of the fact and are familiar with that principle when you make that answer to me?

A. Yes, sir.

Q. And unless it comes forth from the defendants or someone in their behalf, that thought in your mind, whatever it may be, will still be present?

A. The thought I had, yes, sir.

[fol. 2174] Q. That has something to do with this case?

A. I would not say it did.

Q. You told me you read about this case.

A. That is right.

Q. My inquiry was addressed only to this case; I did not speak of any other.

A. Yes, sir, but of course you brought in the conclusion—I have not drawn any.

Q. Let us get each other straight. You have not drawn any conclusion, but you have an idea which you say is detrimental to the defendants?

A. I would not say detrimental.

Q. It is not beneficial to them, is it?

A. No, sir.

Q. It is not to their benefit, is it?

A. No, I would not say it was.

Q. Then it must be against them, is that right?

A. Well, it is not in their favor and it is not to their harm.

Q. Then tell me—you yourself said you would require some evidence forthcoming from the defendants or from someone in their behalf despite your knowledge of the prin-

ciple of law that they need not prove anything at all or call a witness?

A. That is right.

Q. Isn't that consistent with the thought that unless something by way of evidence comes from them you would retain your thought that you have now against them?

A. Well, again I say I have not drawn any conclusion on what I have against them right now.

[fol. 2175] Q. It may not be a conclusion, but it may be a thought or an idea. Let me put it this way: Is there something that you would expect the defendants to prove or disprove in this case?

A. No, sir.

By the Court:

Q. You moved into that house two years ago?

A. Yes, sir.

Q. Where did you live before that?

A. 485 Ocean Avenue.

Q. That is around Prospect Park?

A. Caton Avenue, that is right.

Q. How long did you live there?

A. I think it was six years.

Q. And before that?

A. At the corner of Caton and Ocean.

Q. How long did you live there?

A. Two years.

Q. And before that?

A. 1013 Avenue J, for five years.

Q. Well, now, you never belonged to any civic association?

A. No, sir.

Q. Did you attend any clubs where you heard cases discussed?

A. No, sir.

Q. Did you attend any organizations where cases were discussed?

A. No, sir.

Q. Or any lectures given by Assistant District Attorneys?

A. No, sir.

Q. Did you belong to Beth Temple when you lived on Ocean Avenue, the men's club?

A. Yes, sir.

Q. They had speakers?

A. Yes, sir, but I was not a member there; I have gone [fol. 2176] there occasionally.

Q. Did you hear anything discussed in regard to this case?

A. No, sir, I did not.

Q. Or any of Judge O'Dwyer's cases?

A. No, sir, outside of the fact that a couple of us fellows would get together and have a conversation at my house.

Q. That was social?

A. Yes, sir.

Q. There was nothing by way of propaganda?

A. No, sir.

Q. No discussion of this case?

A. No, sir.

By Mr. Barshay:

Q. I am just trying to find out whether in the back of your head, sometime or some place or now, there is anything against the defendants that you would require proof.

A. I would not say there. I am just trying to explain. I read that article in the paper from the standpoint of reading. I read only a version of it. I would not condemn anybody on what I read.

Q. So it did not influence you, in any event?

A. No, sir.

Q. Now, the Judge will tell you that the defendants need not prove their innocence or disprove any charge against them, or explain any accusation against them. I take it that you will have no trouble in following that instruction?

A. No, sir.

Q. Mr. Turkus has spoken of these names. Are you familiar in any wise with any one of them at all?

A. Outside of what I have mentioned.
[fol. 2177] Q. So that the people involved here who will testify will cause you no embarrassment?

A. No, sir.

Q. The mention of those names, I take it, will not influence you unless and until they take the stand and show that they are a part of this case or have something to do with this case?

A. That is right.

Q. In other words, the mere reading of the names means nothing to you?

A. That is right.

Q. Do you intend to partake in this coming political campaign?

A. No, sir.

Q. Have you ever been a member of the County Committee or something like that?

A. Never.

Q. May I know the experience you have had on a blue ribbon jury?

A. I just had a blue ribbon jury about four times.

Q. Did you actually serve as a juror in those cases?

A. In two.

Q. In two of the cases you decided the guilt or innocence of that defendant?

A. I did.

Q. That was in Kings County?

A. Yes, sir.

Q. One you mentioned yourself?

A. Yes.

[fol. 2178] Q. May I know the name of the other?

Mr. Turkus: I object. He wants to know the name of the case in which this talesman served as a juror.

The Court: Sustained.

Mr. Barshay: May I argue the point? The District Attorney is in full possession of the name of the case in which this man served or any juror served, and I think we ought to have an equal right to know it.

Mr. Turkus: The District Attorney has not in his possession all that information. That is a misstatement of fact.

Mr. Barshay: That is not a misstatement of fact.

Mr. Turkus: Now I say it is wilful, if you repeat it.

Mr. Barshay: It is not only not wilful; it is true, because the District Attorney has in his possession a series of blue cards which show where every juror in this court has had prior service and the manner in which he voted. If this juror is excluded, it is accidental, but the fact remains that he has that system and has always had that system. We should have equal rights.

Mr. Turkus: Something must have happened to that system before certain Assistants went out of office, because I have not any such system with regard to this jury.

Mr. Talley: What have you on that chart, Mr. Turkus?

Mr. Turkus: The name and address.

[fol. 2179] The Court: Why not show it?

Mr. Turkus: I will show it to the other counsel.

Mr. Barshay: He is prejudiced against me. Show it to my friend.

The Court: Mr. Barshay apparently assumes that the same practice prevails as when he was an Assistant District Attorney.

Mr. Barshay: I do not have that presumption.

The Court: Just show the card, so counsel may see it.

(Card handed by Mr. Turkus to Mr. Talley. Mr. Talley, Mr. Cuff, Mr. Rosenthal, and Mr. Barshay examine card.)

Mr. Barshay: I will let your Honor examine the card and see whether or not I made any misstatement.

Mr. Turkus: Will you Honor inquire from Mr. Joseph when he wrote it on the card, right now?

Mr. Rosenthal: The card has been erased.

Mr. Turkus: When I saw the card it was blank.

The Court (examining card): This does not state the name of any case. It simply states what the talesmen said when under examination by Mr. Turkus—that he had served in a capital case and that Judge O'Dwyer presided in that case.

Mr. Barshay: That only proves what I said, that the system still prevails.

[fol. 2180] Mr. Turkus: That does not prove what he charged at all. That was written on the card right now. Mr. Barshay wanted to give the implication that I have something in my possession which I did not want this juror to answer. I did not know he had served on two cases before I heard it for the first time now.

The Court: The question was as to the name of the case. The objection is sustained. Counsel asked leave to argue it and then this squabble began. Let the incident be considered closed.

Mr. Barshay: May we have a ruling with respect to future cards, if there are any?

The Court: You are not required to show your records to the District Attorney, and the District Attorney is not required to show his papers to you.

Mr. Barshay: I am willing to show my records.

The Court: I do not care whether you are or not. The Court cannot require it.

By Mr. Barshay:

Q. Were they both capital cases?

A. No.

Q. Was Mr. Turkus one of the lawyers in any of the cases?

A. No.

Q. Was Mr. Klein?

A. No, sir.

Q. You said you knew Mr. Price by seeing him in court.

A. Yes, sir.

[fol. 2181] Q. In that case was Mr. Klein associated with the defendant's counsel?

A. Yes, sir.

Q. You understand the Klein I am speaking of?

Mr. Turkus: I object to the question.

The Court: The question is not finished.

Mr. Turkus: I will object to it after it is finished.

Q. You understand the Mr. Klein we are speaking of, whom I asked if he was associated in that case with Mr. Price—he is now the associate of the Assistant District Attorney in this transaction, with Mr. Turkus.

A. I don't know. I know of one man by that name whom I know just by seeing him.

Q. I am just asking that for the purpose of inquiring and finding out whether or not you may be influenced by that fact.

A. No, sir.

Q. I take it you know none of the facts other than what you read and which you say just left you with no idea detrimental to the defendants?

A. That is right.

Q. You know none of the people?

A. That is right.

Q. Mr. Turkus started off by asking you whether or not you have any fault to find with the District Attorney who accepts the testimony of an accomplice. You understand that the jury is not here to find fault with any people, but simply to determine on the evidence the guilt or innocence of the defendants?

A. Yes, sir.

Q. I take it that the fact that Judge O'Dwyer's name is [fol. 2182] mentioned will not cause you to be influenced

to the point where you may use it as evidence; that is, his reputation, being District Attorney, will not influence you in this case?

A. No, sir.

Q. And the fact that the District Attorney so often asks you to accept the testimony of an accomplice will also not influence you?

A. No, sir.

Q. The point is, will you accept the testimony of this so-called accomplice?

A. Yes, sir.

Q. You understand that the grand jury can indict an innocent man?

A. Yes, sir.

Q. You understand further that the indictment here is simply a charge, is an accusation?

A. Yes, sir.

Q. Are you in accord with the principle of law that an indictment is not a proof of guilt and that it has not weight in this case?

A. Yes, sir.

Q. Are you in accord with the principle of law which says that when a defendant says he is not guilty his plea of not guilty denies every single accusation against him?

A. Yes, sir.

Q. That includes the charge that he is nobody's accomplice, or that he committed the crime or that he participated or counseled or aided or advised in any way, shape, or manner the commission of the crime?

A. Yes, sir.

Q. Are you in accord with the principle of law which says that when a plea of not guilty is introduced the job becomes [fol. 2183] that of the prosecutor to prove the defendant's guilt beyond a reasonable doubt by competent and believable evidence?

A. Yes, sir.

The Court: Gentlemen, dinner will be provided.

Do not discuss the case nor let anybody talk to you about it; keep your minds open. We will resume at two o'clock.

Before anybody goes out of the room, the defendants are remanded.

(Recess until 2:00 P. M.)

AFTERNOON SESSION—TRIAL RESUMED

(All defendants were represented by counsel.)

Mr. Turkus: I believe there was something the juror wished to address to the Court. Is that correct?

Mr. Elfenbein: Yes.

The Court: You may proceed. You may find out what it is.

By Mr. Barshay:

Q. Mr. Elfenbein, you were just about to address the Court. Do you want to say anything?

A. When his Honor asked me do I belong to any organizations, I mentioned no. I did not mention that I belong to the Masonic organization.

The Court:

Q. Well, that would not be discussing this case.

A. That was all, sir.

By Mr. Barshay:

[fol. 2184] Q. Mr. Elfenbein, do you believe that you can follow the instruction of the Court, who shall tell you in words or in substance that the presumption of innocence is a substantial right to a defendant?

A. Yes, sir.

Q. And that it remains with him throughout the trial and until twelve of you unanimously agree that the evidence has convinced you beyond a reasonable doubt to the contrary?

A. Yes, sir.

Q. That is like an invisible fortress that surrounds each defendant and is evidence in a case in favor of the defendant. Do you believe in that principle of law?

A. Yes.

Q. Mr. Elfenbein, can you accord that presumption of innocence to the defendant?

A. Yes, sir.

Q. Are you in accord with the principle of law that the burden of proof is upon the prosecutor throughout the entire stages of the trial and never shifts for a single second to the defendants?

A. Yes, sir.

Q. And so that if the defendants or any of them should in the wisdom of the counsel who represent the respective defendants refrain from taking the stand or offering testimony through other witnesses, and the Court shall tell you that by reason of the silence you may draw not one unfavorable inference against him, will you follow that instruction of law?

A. Yes, sir.

Q. And even if you believe that a defendant is guilty, [fol. 2185] if you think he is guilty, if you suspect he is guilty, but if you are not convinced beyond a reasonable doubt as to his guilt you must acquit. Are you in accord with that principle of law, sir?

A. Yes, sir.

Q. If chosen as a juror, sir, will you carry that out to the letter and spirit?

A. Yes, sir.

Q. There may be evidence here presented which may be interpreted in two ways, one in the direction of innocence and, on the contrary, the same piece of evidence may be seen in the light of guilt. If the Court shall tell you that that is the manner in which you see that evidence, one in the direction of guilt and one in the direction of innocence, you must give it the innocent interpretation, you are bound to do so under the law, will you follow his Honor's instruction?

The Court: Not evidence. If from such evidence as the juryman finds to be true such evidence is consistent with innocence, but if there is evidence one way and evidence another way, the juryman has to find out which is true. That is for him to decide.

Mr. Barshay: The Court is absolutely correct.

Q. Will you follow that instruction of the Court?

A. Yes, sir.

Q. And if there is a doubt which way you may believe that evidence, you still must give it in the direction of the [fol. 2186] defendant?

A. Yes.

The Court: I would not say evidence; I would say fact.

Q. Do you understand that, sir?

A. Yes, sir.

Q. You will give the benefit of it to the defendant?

A. Yes, sir.

Q. Testimony may be presented—and we are assuming these things now—you may not accept them unless they prove themselves from the stand—that one or more people will take the stand and shall claim under oath that they are accomplices in the commission of this crime. Will you, if the Court instructs you that you must with suspicion, with caution, with care, weigh the evidence that comes from the person who says he is an accomplice, will you, sir, follow that instruction to the letter?

A. Yes, sir.

Q. In other words, he may be telling the truth with respect to himself, and he may not be telling the truth with respect to the fact that the defendant Buchalter is his accomplice. It will be for you to decide, won't it?

A. Yes.

Q. But in view of the fact that he is an accomplice there is a special test that you must give his testimony. Is that so?

A. Yes.

Q. And so if, in addition to the fact that he admits out of his own mouth that he is an accomplice, there will come the further proof that he or they, whatever the situation, have at one time denied their complicity under oath in this [fol. 2187] very case, will you take that into consideration in judging whether or not he is telling the truth with respect to the defendant Buchalter?

A. Yes, sir.

Q. And if, in addition to that, you find that these people have a background steeped in crime, such as murder eleven times, robbery and burglary and perjury and shylocking and extortion, the more demerit marks they admit out of their own lives, will you with greater caution weigh the testimony that comes from such people?

A. Yes.

Q. Will you look to find out whether or not the person who gives that testimony has a motive to give it, what induces him to give it, and why is he giving it? Will you do that, sir?

A. Yes, sir.

Q. And if you find that he has been treated, or they have been treated, awaiting this trial, by living in hotels, going to baseball games, seeing their women, their wives, at the

hotel, getting hotel food, taking rides, will you look to see whether that treatment induces them to falsify with respect to the defendant Buchalter?

A. Yes, sir.

Q. Will you also take into consideration in deciding whether or not they or he claim to be accomplices of Buchalter that they have never seen or spoken to Buchalter about this or any other case? Will you do that?

A. Yes, sir.

Q. If you find that as the result of their activity here they shall remain unpunished for the crimes they themselves admit, will you take that into consideration to see whether or not that induced them to falsify with respect to the defendant Buchalter?

A. Yes, sir.

Q. I am sure the Court shall tell you—to go one step further, that even by the greatest stretch of the imagination or if for any reason you decide that the accomplice is telling the truth, there still can be no conviction unless his testimony—

The Court: Finish.

Mr. Barshay: May I?

Mr. Turkus: I am just telling the juror not to answer.

Mr. Barshay: I will reframe it.

Q. If the Court shall tell you that assuming you do believe the testimony of the accomplice, but there is no other evidence in the case which you believe tends to connect the defendant Buchalter with the commission of the crime you must acquit, assuming that to be the state of facts, will you acquit, sir?

A. Yes, sir.

Q. And so the mere fact that if a person says that he participated in the shooting of Rosen and the police come or doctors come or people come and say, "Here, we were at the place this alleged accomplice claims Rosen was shot. There was a body of Rosen found dead," that is not corroboration that Buchalter had anything to do with it. That merely corroborates the fact that he himself participated in the shooting, meaning the accomplice, [fol. 2189] but if there is not any other testimony to connect Buchalter with the commission of the crime, or tending to connect, you will acquit, won't you?

A. Yes, sir.

Q. Now, Mr. Elfenbein, I take it you understand from your past experience that not every person who raises his hand to tell the truth does so, you understand?

A. Yes.

Q. So you become a searcher of the truth. And if the other evidence which may be offered to tend to connect the defendant Buchalter with the commission of the crime, if you find from the witness stand that the person who gives that testimony, or people who give that testimony are themselves tainted with a criminal background, such as murder and robbery and extortion, will you look carefully before you accept that testimony?

A. Yes, sir.

Q. And the same principles with respect to the truth or the falsity of their testimony you will apply to them, won't you?

A. Yes, sir.

Q. Men may come here and give testimony that will have an application only to one defendant. The trial may be long. It may have an application to another defendant. You may even be given release from the Court that a piece of testimony in question is not binding upon a given defendant. Will you be able to keep that straight in your mind, even if it takes a long time to try this case and not [fol. 2190] use the evidence given against one and use it against the other unless the Court so tells you? Do you think you can keep that in mind?

A. Yes.

Q. You understand, do you not, that while they are being tried together now, in reality each one is getting a separate trial and that this is merely a matter of convenience. You understand? And with respect to each defendant you must render a separate and distinct verdict. Do you agree with that?

A. Yes, sir.

Q. Will you do that?

A. Yes, sir.

Q. Rightfully, Mr. Turkus said that counsel for the defendant Buchalter has brought out with respect to the other jurors the fact that Mr. Buchalter is now incarcerated for a term of from forty-four, I think, to seventh years in some prison. We brought that out, and we acquaint you with that fact now. Will it, that, in and of itself, prejudice

you against the defendant in a manner which would preclude you from rendering to him a fair trial?

A. No, sir.

Q. As Mr. Turkus says, this has nothing to do with the case. You understand that?

A. Yes, sir.

Q. And by no stretch of the imagination will there linger any prejudice in your mind against him by virtue of that?

A. No, sir.

Q. Should the Court tell you that the character of any defendant, any defendant charged with a crime, is never an issue in the case—he may be a man of bad character, of bad reputation—that has nothing to do with the case unless [fol. 2191] we choose to make it an issue by offering good character testimony, otherwise you may not consider it. Will you follow that instruction?

A. Yes, sir.

Q. That is fair, isn't it?

A. Yes, sir.

Q. Now, from the questions of other counsel put to other jurors, it was indicated that some may offer a defense of alibi. But I am asking you this: In the event that some offer a defense and in the event our client, Buchalter, fails to offer a defense, will you be influenced by his failure to do so?

A. No, sir.

Q. Each person stands on his own, you understand?

A. Yes, sir.

Q. I take it you understand the rule, too, if the Court so charges you, that one accomplice can never corroborate another accomplice. Are you in accord with that?

A. Yes, sir.

Q. There may be a time, Mr. Elfenbein, when someone may say he is an accomplice, the Court shall tell you as a matter of law he is, and then you will follow the principles that I outlined before, but there may come a time when the Court will leave to you for your decision to decide whether or not a given person is or is not an accomplice. Will you use your independent judgment on that?

A. Yes, sir.

Q. No matter how much he may claim he is not, if the contention is that he is, or the evidence leads you to believe that he is an accomplice, you will say so, and if you find

[fol. 2192] that he is you will want other evidence in the case which tends to connect the defendant with the commission of the crime; are you in accord with all those principles?

A. Yes, sir.

Q. It takes courage to render a verdict in any case, especially one highly publicized, such as this is, especially a verdict which reflects the truth in this case in your own independent judgment.

Mr. Turkus: I object to the form of the question. It takes no such thing.

The Court: Finish your question.

Mr. Barshay: I will reframe it.

Q. I said it takes courage, sir, to render a verdict in a case which reflects the truth according to the evidence in this case. Have you that courage?

Mr. Turkus: I object to it.

The Court: Sustained as to form.

By the Court:

Q. Mr. Juror, will you decide the case on the evidence and render a verdict according with the evidence and whichever way that may lean?

A. Yes, sir.

Q. If it be for conviction or acquittal?

A. Yes, sir.

Q. Will you have the courage?

A. Yes, sir.

By Mr. Barshay:

Q. And will you exercise it in this case if chosen as a juror?

A. Yes, sir.

[fol. 2193] Q. Any place is there in the back of your head any thought at all which would preclude you from rendering a decision based upon the evidence in this case?

A. No.

Q. You are sure about that? So can the defendant Buchalter trust the keeping and the preservation of his legal rights in your hands?

A. Yes.

Q. No doubt about that?

A. Yes.

Q. Mr. Koehler, have you read about this case at all?

A. In the *Tribune* and *World-Telegram*.

Q. I have it you said you were familiar with some of the people whose names were mentioned by Mr. Turkus. In consequence of reading it, hearing it, or knowing the people, have you formed any idea with respect to the defendants?

A. These people?

Q. Yes.

A. No.

Q. Have you formed any impression about the case itself?

A. No.

Q. Did you believe the truth or accuracy of whatever you heard or read?

Mr. Turkus: Objected to. The juryman has already said he formed no opinion or impression in regard to the case or the defendants, so he has merely read headlines.

The Court: He did not say that in response to Mr. Barshay's questions.

Mr. Turkus: Yes, he did, right now.

[fol. 2194] The Court: I did not so understand.

By the Court:

Q. Is that a fact, you have come to no conclusion?

A. No, I have not read enough about it.

Q. You formed no opinion?

A. No.

By Mr. Barshay:

Q. Did you form an impression, which is somewhat less than an opinion?

A. That is pretty hard to say, Mr. Barshay.

Q. Some people do and some don't.

A. No.

Q. In other words, I am seeking to find out whether there lurks in your mind something which is detrimental to the defendant. As the result of your experience with flour merchants or trucking merchants or others you seem to be familiar with, if they should become part and parcel of this

case, would that raise a prejudice in your mind against the defendants?

A. I prefer not to answer.

Mr. Turkus: Your Honor—

Mr. Barshay: Your Honor, may I call to your attention the answer given by this juror?

The Court: Yes.

Mr. Barshay: He said he would prefer not to answer the question as I put it to him.

The Talesman: He wants me to go to my impressions of these people and other people who I met.

Q. (Pending question read.)

[fol. 2195] The Court: How can he answer that?

Mr. Barshay: It is quite conceivable, sir, from a list of names Mr. Turkus read, especially one, that the gentleman may or may not have so great a prejudice against that one as it may overflow onto the defendants. I do not know. If it does not, he can tell me.

The Court: Your question does not assume which side of the fence such evidence would affect.

Mr. Barshay: I am assuming now that I am speaking of the evidence which shall be forthcoming from the prosecution.

The Court: You mean if any of those people should be connected up?

Mr. Barshay: That is right.

The Court: With the defendant?

Mr. Barshay: That is right. If I did not make myself clear—

By the Court:

Q. The question is, whatever opinion you may have of these people—

A. Yes.

Q. —would you see to it that you were not prejudiced against the defendants by reason thereof?

A. No, but he is leading me to believe that what I know of the other people I should be governed — what I think of these people.

The Court: No, he does not want you to.

[fol. 2196] Mr. Barshay: Just to the contrary.

The Talesman: Then O. K. That is different.

By Mr. Barshay:

Q. I take it you said you had certain prejudices against people.

A. I had certain business experiences with these people which were not of the best.

Q. And is detrimental to those people?

A. To those people.

Q. You maybe did not follow me. Assuming that those people against whom you may have had a prejudice, assuming that they should become a part and parcel of this case and connected with any of the defendants here, I am trying to find out will that prejudice which you may have against those people inure to the detriment of the defendant?

A. No.

Q. You understand?

A. Yes.

Q. Under no condition?

A. No.

Q. Especially, sir, with respect to the name Silverman. I do not know whether he will or will not play a part in this case. That will not affect you whatever?

A. No.

Q. How much experience have you had as a juror?

A. I have been called many times but have not served.

Q. May I know how many times you did serve?

A. Probably ten—no, it would not be ten; seven, I think.

Q. And can you tell me how many capital cases you were a juror in?

A. I think they were all capital cases.

[fol. 2197] Q. And would you say from memory that each of the cases came to a conclusion in the form of a verdict one way or the other?

A. Yes.

Q. Your most recent experience has been how long ago?

A. Not within three years.

Q. And in any of those cases, Mr. Kohler, was I the prosecuting attorney? I have been in the office from 1929 to January 1, 1940, which includes the time that this case has happened. You never came across me?

A. No.

Q. Now, in any of the defense counsel that you met, was Mr. Turkus or Mr. Klein associated in any manner?

A. No.

Q. Did you say you know anybody in the D.A.'s office slightly or socially or in any way whatever?

A. No, just remember having been called for a case only.

Q. Did you know Charles Cohen, prosecutor?

A. I knew a Mr. Cohen, but I did not know he is a prosecutor.

Q. If it was a homicide case it was Mr. Charles Cohen.

A. Then I know who he was.

Q. That has nothing to do with this case?

A. No.

Q. Mr. Koehler, do you intend to participate in the forthcoming election?

A. No.

Q. Are you a member of any political club?

A. No.

Q. Are you a member of any Grand Jurors' association?

A. No.

Q. Were you ever a Grand Juror?

A. Federal Grand Jury.

[fol. 2138] Q. How often?

A. Once.

Q. Have you personally been a victim of any crime?

A. No.

Q. Has any member of your family ever been the victim of any crime?

A. No.

Q. Are you prejudiced against people charged with crime?

A. No.

Q. I take it you received so often the instruction on the principles of law that I need not go into each of them separately?

A. No.

Q. Are you still in accord with them?

A. I am.

Q. Would you consider it to the detriment of the defendant Buchalter if it was developed here that he is now incarcerated for a long period of time?

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Mr. Barshay: Exception.

Q. If the Court shall tell you that the fact that he is incarcerated for a long period of time shall be used by you only in weighing the believability of his credibility if he should take the stand, and for no other purpose, would you follow that?

A. Yes.

Q. Was your Federal service recent?

A. Not within fifteen years.

Mr. Barshay: No further questions.

By Mr. Rosenthal:

[fol. 2199] Q. Mr. Elfenbein, you say you are now a general contractor?

A. Yes, sir.

Q. Have you any current job?

A. Yes, sir.

Q. What type of work and where?

A. Corporation work.

Q. In what locality?

A. New York Avenue and Prospect.

Q. When you were in the painting business over on Sheriff Street you answered Mr. Turkus that you had a number of customers in the Brownsville and East New York section; is that correct?

A. Yes.

Q. Did that take you into that section very often?

A. Probably about once every ten days.

Q. And what would you do, go to various storekeepers there to sell them paint?

A. Houses, contractors.

Q. You sold to the contractors, not to the stores?

A. That is right.

Q. And you dealt with a number of paint contractors which were located in the Brownsville-East New York section?

A. That is right.

Q. Covering what period of time was it that you would visit Brownsville and East New York and go to the homes of these contractors? How many years?

A. Since 1923, '24.

Q. Up until about four years ago?

A. Say probably around five years ago.

Q. And since that time when you went out of the paint business, did you continue to go to the Brownsville and East [fol. 2200] New York section?

A. No, sir.

Q. Have you any acquaintances in that particular section?

A. No, sir.

Q. So that in so far as any visits to Brownsville or East New York is concerned, they would be confined to more than five years ago; is that right?

A. About that.

Q. You answered Mr. Turkus that you heard certain names whom he mentioned to you, I think one he called Jake the Bum. Is that the name?

Mr. Turkus: You know the name.

Mr. Rosenthal: You must be acquainted with my mind.

Mr. Turkus: I am acquainted with the record in a certain case.

Mr. Rosenthal: I am acquainted with the record in a lot of cases that you had.

Mr. Turkus: That is good. Learn some more.

Q. By the way, let me just reframe, as long as I am reminded, Mr. Kochler: You said you were present in the Silverman case and you were called as a juror.

A. Not in the Silverman.

Q. Did you meet Mr. Turkus, who represented Silverman on that trial?

Mr. Turkus: I was assigned by the Judge.

Mr. Rosenthal: I object to Mr. Turkus making any statements unless he is asked questions.

[fol. 2201] Mr. Turkus: I resent Mr. Rosenthal trying to make an improper record. I was assigned by the Judge after the Bar Association had submitted a list of ten names, and I had to try the case for nothing. Let us keep the record straight.

Q. He mentioned the name of Midnight Rose, Rose Gold. Did you know him when he represented Rose Gold, Midnight Rose? He was not assigned to that case, Mr. Kochler.

Mr. Turkus: No, Mr. Barshay finished it.

Mr. Barshay: It is not finished.

Mr. Turkus: He is finishing it.

Mr. Barshay: I have a pride in every client I represent, and I have no reflection on any lawyer who represents any defendant, assigned or retained.

The Court: One at a time.

Mr. Rosenthal: You ain't the only one who can cast aspersions.

The Court: Please.

Mr. Turkus: You Honor, may we have that remark stricken from the record?

Mr. Rosenthal: I submit that is a proper remark in view of the statement uncalled for by Mr. Turkus while I am questioning a jurymen.

Mr. Turkus: Mr. Rosenthal addressed a remark to me.

The Court: Everybody kindly be quiet and seated while the Court speaks. This is a long trial and is strain on all [fol. 2202] counsel, but all counsel are distinguished counsel and know how to try a case. It is important we all maintain poise, or we will have no speed at all within reason in finishing with this jury, and I have got to work you overtime, much as I dislike it, in order to make up for such time as we lose in this manner. Let everybody try to deal with one another pleasantly. Try again.

Mr. Rosenthal: May I submit to the Court that Mr. Turkus be instructed that when I am addressing a jurymen he should not make any interjections?

The Court: Don't start in again.

Q. I will continue questioning you, Mr. Elfenbein. What I say to him is not concerned with you. You heard certain names which he mentioned which you say were familiar to you; is that correct, sir?

A. Yes, sir.

Q. Were those names or did those names become familiar to you by reason of your business in Brownsville? Is that how you became acquainted with them?

A. Yes, indirectly so.

Q. Did you have any dealings whatsoever with the particular individuals that he mentioned?

A. No, sir.

Q. Were persons who were customers of yours the persons that had dealings or communicated with you certain things?

A. That is right.

Q. About these individuals. Whoever or whatever they may be, were they individuals who indirectly or directly [fol. 2203] concerned you or your particular line of business at that particular time? Let me make it clear. You said you had trouble, I think, with some union.

A. No, I had no trouble.

Q. Or the people whom you were dealing with had trouble with the union and that prevented you from delivering paint to them; is that right?

A. That is right.

Q. By reason of those facts were these people whose names Mr. Turkus mentioned to you directly or indirectly involved in these troubles that you had in connection with your business?

A. They were.

Q. And because of the mention of these names by Mr. Turkus, has any inference arisen in your mind that these particular individuals have any connection whatsoever with this case?

A. No, sir.

Q. Well, it has not been explained to you, the manner in which an indictment has been found, nor has anybody questioned you as to your familiarity with the fact that an indictment is an accusation merely against the defendant and is no proof of the crime. Is that clear to you?

A. Yes, sir.

Q. Is it also clear to you that at this particular time the defendant is not apprised of the exact proof or nature of the proof which the District Attorney seeks to adduce upon the trial of the case to prove his guilt to your satisfaction beyond a reasonable doubt? Is it clear?

A. Yes, sir.

Q. Having mentioned these names to you, I must assume [fol. 2204] that Mr. Turkus has something in his mind. Is that clear?

A. Yes, sir.

Q. If it should develop— Excuse me, it might be funny for you to have something in your mind, if it so laughable.

Mr. Rosenthal: I submit, your Honor, when I ask questions Mr. Turkus starts laughing. Whether it is the joke that I said he had something in his mind I do not know.

Mr. Turkus: Will your Honor again give the admonition?

Q. Assuming, sir, that something develops in this case, whether any of those particular individuals he mentions are called as witnesses, or whether some part of the proof should involve any of those persons whom he named and whom you say you have knowledge of, would that in any wise affect your judgment in so far as determining the proof in this case is concerned?

A. No, sir.

Q. You could leave your impression as to the particular individuals outside the jury room without in any wise permitting it to detract from what you hear from the witnesses on the stand and from that alone, is that right?

A. Yes, sir.

Q. In addition to that, I think you said that you came in contact with certain union officials; is that right.

A. Yes.

Q. Was that also in the line of your particular business that you came in contact with union officials?

A. Yes, sir.

Q. Did you have any difficulty of any character, sir, with [fol. 2205] these union officials in any wise, either directly or indirectly?

A. No, I would not say I did.

Q. Of course, the only way—I am not trying to unnecessarily pry into your business—the only way we could find out whether you did or not is by your telling. You say you would not say. Is there any doubt in your mind as to whether you did or did not have any trouble either directly or indirectly with any of them?

A. If a job was held up on account of union trouble, I could not make deliveries of material. If you call that trouble, then it is trouble.

Q. Did it cause you to gain any adverse impression as to any of these persons who were officials of the union?

A. No, I would not say that.

Q. Either as to the justice or injustice of the delay of calling the strike?

A. I did not feel good about it.

Q. That impression that you gained, assuming something were to transpire in this case regarding unions or union officials, judging from the questioning of Mr. Turkus in which he has asked about Amalgamated Clothing and various names of various individuals who are supposed to be attached to the various unions, would that fact, the

knowledge which you gained or the fact of your having been held up in any wise enter into your deliberation either subconsciously or consciously in determining what weight you will give to any witness or witnesses on the stand in this trial?

[fol. 2206] A. No, I don't think it would.

Q. You say you don't **think** it would. Does that imply a doubt in your mind?

A. No.

Q. As to whether or not there would creep into your deliberation the unpleasant experience or experiences that you may have had by reason of the nature of your business? Does that imply a doubt?

A. There is no doubt in my mind at all now at this point.

Q. At this point we have not gone any place, Mr. Elfenbein.

A. No doubt in my mind at all.

Q. You said you don't think, and that is the reason why I want to be clear on the subject. Assuming that in the course of this trial witnesses are called by The People or by the defense—it may be either—who may have some connection or attachment with certain unions, even to the extent of being officials of that particular union, would the difficulties which have arisen in your life by reason of the things that you have just mentioned be of such a nature that you would permit that impression that you have gained to influence you in determining what weight you are going to give to the testimony of people attached to the union in this trial?

A. No, sir.

Q. In addition to that, sir, you had many accounts, you say, in Brownsville?

A. Yes, sir.

Q. Did you have any difficulty in collection of various [fol. 2207] accounts in Brownsville?

A. Yes, sir.

Q. Did you have any unpleasant experiences in relation to the accounts which you had in Brownsville?

A. No.

Q. Other than the failure to collect money, which, of course, is unpleasant to anybody, that is, when it is justly due you. In any event, was any of your experience in connection with your dealings in Brownsville of such a nature

that you would be in any wise influenced in your determination in so far as individuals who may or may not reside in Brownsville are concerned if they were called as witnesses?

A. No, sir.

Q. You also said that you were familiar with Saratoga and Livonia Avenues. You told Mr. Turkus that too, didn't you?

A. Yes, sir.

Q. You did not recall whether, I think you used the name of Midnight Rose or Rose Gold in questioning you about that particular corner or Livonia and Saratoga Avenue—you recall his asking you?

A. That is right.

Q. You don't happen to have any acquaintanceship with Midnight Rose or Rose Gold by any means, do you?

A. No.

Mr. Rosenthal: He is smiling again. That is because he is——

Mr. Turkus: May we have that remark stricken from the record?

Mr. Rosenthal: All right, I withdraw it.

Q. In any event, sir, you are familiar with the particular [fol. 2208] corner of Saratoga and Livonia Avenue—you told Mr. Turkus that?

A. I knew of that crossing offhand, but I am not familiar. I could not tell you what is on this corner or that corner.

Q. Then when Mr. Turkus asked you whether you were familiar with the corner and you said yes, by that you meant that you know the location?

A. That is right.

Q. But you are not familiar with what particular places are on any of those corners?

A. No.

Q. Am I correct in that?

A. Correct.

Q. Is your knowledge of that particular corner of such a nature that in the event that upon this particular trial that particular corner is mentioned in the evidence by one or more witnesses, that your knowledge would in any wise influence you in the determination of this case?

A. No, sir.

Q. You served as a juror in a capital case; is that right?

A. Yes.

Q. Have you served more than once?

A. Yes.

Q. As a juror in a capital case?

A. Yes.

Q. How often have you served as a juror in a capital case?

A. Twice.

Q. When was the last time? Just approximately, what year and where was it?

A. It was in the County Court.

Q. Let me put it this way: Of course, you did not know that—when, other than that particular one, did you—was [fol. 2209] it that you served as a juror in a capital case?

A. Before Judge Fitzgerald.

Q. How long ago was that?

A. I guess about two years ago.

Q. Was it since Judge O'Dwyer became District Attorney or was it prior to his being District Attorney?

A. I think since Judge O'Dwyer became District Attorney.

Q. Judge O'Dwyer became District Attorney in January of 1940.

A. Oh, no. This, I guess it might have been about a year and a half. I can give you the name of the case.

Q. You are not supposed to, according to the Court's ruling, name cases. Can you tell us who the Assistant District Attorney was?

A. Yes, Gottesman.

Q. Then that was before. Sidney Gottesman?

A. Yes.

Q. That was before January, 1940. Did that case go to a conclusion?

A. Yes, sir.

Q. Have you been called to serve on the jury since Judge O'Dwyer has become District Attorney but not actually served?

A. I have been called—summoned to appear, but have not been called.

Q. When you say "summoned to appear," did you actually appear in court and were you excused?

A. That is right.

Q. Either by reason of the fact that the panel was completed before your name was called——

A. That is right, sir.

Q. When was it that you were called the last time to appear on a special panel?

A. I think it was about seven months ago.

Q. Before what Judge?

A. I don't remember that.

Q. Your memory seems to be better as to past than present. Seven months ago is a short time. Can you give us any idea who the judge was? Was it Judge Fitzgerald?

A. No.

Q. Judge Taylor?

A. I think in that particular case I was summoned to appear and then I got a letter postponing the appearance. That is what that was, the same as I got here a month ago, I got summoned to appear and then I got a letter following that I would be notified when to come again.

Q. Did you ever actually appear in the court and sit through the examination of jurors except this one?

A. No, sir.

Q. You merely received a notice to appear?

A. That is right.

Q. And then subsequently got a notice that you would be notified in the event that they required your appearance, and then you were not notified any more about it. Am I right in that statement?

A. That is right.

Q. With the exception of that episode of seven months ago, when before then did you actually come?

A. Besides that I got one to appear on September 8th, I think it was this month, and then got a letter not to come.

Q. Were those the only two occasions when Judge [fol. 221] O'Dwyer was District Attorney?

A. Yes.

Q. That you got these notices?

A. That is right.

Q. And on neither occasion did you actually appear in court in answer to those notices?

A. No, sir.

Q. Mr. Turkus made a slight error, but he did not know it. Captain Kleinman is now Major Kleinman. He was

made a major a few days ago. You said you knew Mr. Price?

A. I do not know him. I made a mistake if I said I know him.

Q. You said that you knew him by reason of the fact that he was an attorney in a case about five years ago when you were a juror.

A. That is right.

Q. Is that your only acquaintanceship with Mr. Price?

A. That is right.

Q. And you have never met him socially since then?

A. No.

Q. Have not had any dealings with him?

A. No, sir.

Q. You also said that you knew a clerk of the court down in Sea Gate. May I inquire his name?

A. Marker.

Q. Do you know what court he is attached to?

A. I do not know.

Q. It is not a criminal court?

A. No, I don't think so.

Q. I think you further stated that you had read a number of articles of a series in the *Daily Mirror*. Is that correct?

A. One paper.

Q. Whether you bought it or whether you picked it up, you did say to Mr. Barshay that you had read a number [fol. 2212] of articles in a series of articles written in the *Mirror*.

A. Not particularly the *Mirror*, but I read several papers.

Q. We will come to the other papers in a minute. Is it a fact that you read a number of articles published in the *Daily Mirror* in connection with the alleged series in which the names of one or more of these defendants were mentioned?

A. Yes, sir.

Q. And how recently was the last of those articles which you read in *The Mirror*, approximately?

A. A couple of weeks ago or so.

Q. And did you also read the head-notes to those particular articles, the black, bold-face type that was in the *Mirror*?

A. Yes, sir.

Q. Did you also read on the bottom, "Continued in our next. See Tomorrow's edition," and so forth and so on?

A. Yes, sir.

Q. By the way, are you in any wise related to the Elfenbein of Elfenbein's Bakery?

A. No, sir.

Q. These articles which you read in the *Mirror*, would you say there were about six or seven instalments that you read or more?

A. In any particular paper?

Q. In the *Mirror*.

A. I only read it when I got the paper for nothing.

Q. Sometimes it makes better reading when you get it for nothing. How often did you get it for nothing? Six [fol. 2213] or seven times?

A. In the space of a couple months, six or seven times.

Q. What other papers do you regularly read that you think enough of to buy?

A. The *Post*.

Q. And do you read any articles in the *Journal-American*?

A. *Post* and *Herald-Tribune*.

Q. You did not read anything about the life of O'Dwyer—

A. I have.

Q. That is the *Journal*.

A. I happened to read that.

Q. Did you read the series of those articles in the *Journal*?

A. No, sir.

Q. Were the names of any of the defendants mentioned in any of the articles that you read in the *Journal*?

A. I don't recall that, sir.

Q. Then you say you read the *Tribune* and *Telegram* and the *Post*; is that right?

A. *Herald-Tribune* and *Post*.

Q. In the articles that you read at times, was the Rosen case discussed in any of the newspaper articles?

A. I don't think I recall reading about that.

Q. You are not sure as to whether it was or it was not?

A. No, sir.

Q. Were you impressed by the articles that you read in these various papers in so far as they mentioned the names of any one of the defendants?

A. No.

Q. They made no impression on you?

[fol. 2214] A. It made an impression from the standpoint—but no impression—

Q. I want to see if I am correct in my assumption when I say in answer to Mr. Barshay you said that the thought which you had was of such a nature that you would expect evidence to come from the defendant to remove that thought. Did you say that to Mr. Barshay?

A. What was that again?

Q. When Mr. Barshay asked you as to whether or not you had an impression—

A. Yes, sir.

Q. Do you recall you hesitated and said you would not say it was an impression, you said it was a thought?

A. Yes.

Q. And then further on you said you would expect evidence to come from the defendants to remove that thought. Did you say that to Mr. Barshay?

A. By that I mean there might have been some opinion that I have gotten.

Q. That is what we are trying to find out. You say there might have been some opinion that you had gotten?

A. That is correct.

Q. In other words, rather than express yourself by saying you had a thought, the fact is that you now say that you might have an opinion of and concerning some of the defendants; isn't that true?

A. I would have to have an opinion of them, no matter what I read, regardless of anything.

Q. Have you an opinion of and concerning any one of the defendants?

A. As far as what I have read, an opinion on that one thing that I have read.

[fol. 2215] Q. In other words, you accepted what you read to be the truth and so formed an opinion, isn't that right?

A. No, I did not accept it as the truth. I felt, after all, I would have to read something else or go more thoroughly into it—

Q. I want to see. I am not trying to in any wise have you make statements which either I do not understand or me make statements that you do not understand. I am trying to see whether our minds agree on the wording that we use. You say or have said to me now that by reason of what you read you might have an opinion of and concerning some

of the defendants, one or more^s of the defendants. Am I right in that statement?

A. An opinion as far as a person being implicated.

Q. Yes. That is, you have an opinion in so far as the defendants or whoever it was that you read of the defendants being implicated. Isn't that your word?

A. Yes.

Q. And by implicated, you mean implicated in this particular crime?

A. Yes, sir.

Q. And your opinion which you say you might have as to the implication of one or more of the defendants in this particular crime is of such a nature that when you answered Mr. Barshay you told him that you would expect evidence to come from the defendants to remove what you then said was a thought and which you now say might be an opinion; isn't that right, sir?

A. Yes.

Q. And that is the state of your mind in so far as the [fol. 2216] particular defendant or defendants are concerned in respect to this particular case, isn't that right?

A. That article gave a certain thought in that paper, but I do not agree with that thought that is in the paper.

Mr. Turkus: I apply a challenge for implied bias on the answers given.

The Court: We cannot try that because it is an interruption. The case is now under examination by Mr. Rosenthal.

Mr. Rosenthal: In any event, Judge, in view of the statement of the District Attorney I will accede and refrain from further questioning.

The Court: Try the challenge.

Mr. Rosenthal: And allow him the challenge.

The Court: Do you challenge? The District Attorney cannot interrupt the challenge.

Mr. Rosenthal: All right, I will do it to save time. I challenge for implied bias.

ALFRED ELFENBEIN, residing at 771 East 17th Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Rosenthal:

Q. Mr. Elfenbein, you were asked certain questions by three counsel while you were in the chair?

A. Yes, sir.

Q. If those questions were repeated, would you substantiate [fol. 2217] give the same answers?

A. Yes, sir.

Mr. Barshay: No questions, your Honor.

Mr. Turkus: No questions.

Mr. Cuff: None from us.

Mr. Turkus: None by the District Attorney.

The Court: So far as the Court's mind is concerned, it views the answers as insufficient. I think counsel should try to get down to the point to find out whether or not this talesman has any impression or opinion which is prejudicial to the defendant which he could not lay aside in deciding the case. There has been no direct approach to that point. This gentleman seems to be an intelligent man.

By Mr. Talley:

Q. Mr. Elfenbein, our effort is to get fair and impartial jurors in this trial, as you know.

By the Court:

Q. You know that is very important. You have read a series of articles. What you mean by "impression," we don't know. Just what you may mean by sort of opinion, we don't know. Whether you believe or disbelieve newspaper articles we don't know, but it is necessary to give the defendants a square trial.

A. Yes, sir.

Q. Everybody is entitled to that, and there must be no cold deck at the start.

A. Yes, sir.

Q. And that is what Judge Talley is going to question [fol. 2218] you on.

A. Yes, sir.

By Mr. Talley:

Q. Whether you believe these stories that you read or not, you did form an impression?

A. Yes, sir.

Q. With respect to some of these defendants or all of them, as the result of that reading, didn't you?

A. Yes, sir.

Q. And that impression you have as you sit here listening to me question you. That is true, isn't it?

A. That is right.

Q. If you were selected as a juror, you would commence your consideration of this case with that impression in your mind?

A. Yes, sir.

Q. And that impression is unfavorable to these defendants, isn't it?

A. Yes, sir.

Q. And something would have to happen to remove it, wouldn't it?

A. Yes, sir.

Q. And that something would be evidence given upon that witness stand upon which you are now sitting; isn't that right?

A. Yes, sir.

Q. And that evidence would necessarily have to come from the defendants or from some witness testifying in their behalf, isn't that so?

A. Yes, sir.

The Court: Sustained.

Mr. Talley: I think that is sufficient on the challenge.

[fol. 2219] By Mr. Rosenthal:

Q. Mr. Koehler, I have a lawyer named Koehler in my office whose father lives in Elmhurst, Long Island. I want to see whether there is any relationship.

A. From Queens Village.

Q. One of the family comes from Queens Village. His name is Herbert Koehler.

By the Court:

Q. Was your grandfather a lawyer?

A. No, sir.

Q. That was asked for a reason, because James P. Koehler, who recently died, at the age of eighty-eight, was a well-known Brooklyn lawyer and was secretary of Mayor Gaynor.

A. My father is eighty-six and he is still alive.

By Mr. Rosenthal:

Q. You were acquainted with Max Silverman, I think.

A. I knew of a Max Silverman.

Q. And I think you mentioned some trucking company which you did business with. Flour trucking, was it?

A. (The only part of answer audible from the jury box was "insurance companies" and "Luckman trial.")

Q. In other words, did you know personally the Luckmans?

A. They had one end of the warehouse in which we had an office in Stone street.

Q. In that way you came in contact with them?

A. Yes, sir.

Q. In a more or less neighborly fashion, both occupying [fol. 2220] the same building?

A. That is it.

Q. And you would bid the time of day as you passed by? At any rate, you were in the same office building or same warehouse. By reason of that, I think you mentioned also to Mr. Turkus, something about other truckmen. You were not only familiar with this—

A. In the handling of so much merchandise for insurance companies, it must be trucked, and those trucking companies worked for our concern.

Q. In other words, the salvaged goods that you paid for you would truck to some warehouse in order to salvage?

A. Quite correct. And those truckmen were hired.

Q. You would be subrogated to your insurer's right, and you would take the goods. The only reason I am asking is by reason of the various questions that Mr. Turkus has asked of other jurymen. Were those other truckers in any wise associated with the clothing industry, I think is the question.

A. No, sir.

Q. Was there any question of union activities?

A. We never had any trouble.

Q. May I know the last time that you were called to serve on a capital case, whether you actually served or not?

A. I have not served, and I am guessing when I say it, not within three years, but I have been called twice a year since.

Q. When you say you were called,—

A. For instance, my last call was in May.

Q. Of this year?

A. Yes, sir.

Q. And when you were called in May, did you actually sit [fol. 2221] in court?

A. No, the panel was exhausted before it reached my name, I mean the panel was completed.

Q. By that I mean were you present during the examination of jurors?

A. Yes, sir.

Q. And sat in court for——

A. Not very long.

Q. Until the jury was picked? Was that a capital case?

A. I don't remember.

Q. That would be in May of this year. Do you know before what judge that was?

A. Leibowitz, and the same Mr. Cohen that I mentioned was the assistant.

Q. You were also then called about last month, is that it?

A. Yes, I have been called on practically all those Amen cases, perjury.

Q. That was in the Supreme Court?

A. I have been called——

Q. Let us confine ourselves to the County Court. Were you called last November in the County Court, or did you mean——

A. Well, I don't know. I don't remember. It was over in Fulton Street, first floor.

Q. Supreme Court? Judge MacCrate? What I am interested in is what capital cases, if any, you were called, even tho you did not actually serve within the last two years, since Judge O'Dwyer has been District Attorney.

A. I don't remember any names.

Q. Can you remember any judge?

A. I just mentioned Leibowitz.

Q. I mean outside of him, and I do not mean Judge Mac-
[fol. 2222] Crate. I am talking now about capital cases within the last two years in this court.

A. I think before Judge Fitzgerald, but what the case was——

Q. Did you sit through the examination of the jurors?

A. I sat until I was excused.

Q. Mr. Turkus has asked other jurymen whether the names of Martin Goldstein or Phil Strauss were familiar to them. Were those names familiar to you?

A. When you say "Martin Goldstein"—Bugsy Goldstein.

Q. Is that name familiar to you?

A. I think Mrs. Goldstein married people next door to
[fol. 2223] us. There is some relationship there.

Q. There is relationship as between Mrs. Goldstein and the next-door neighbor on Avenue R?

The Court: Who is Mrs. Goldstein?

The Talesman: Buggsy Goldstein's wife. You mentioned the name Martin Goldstein. I did not know that.

Mr. Rosenthal: He calls him Martin (Buggsy) Goldstein.

Mr. Turkus: I do not call him that. That is what he is.

The Court: Please stop quarreling.

Q. By reason of this episode, have you in any wise followed with any interest the name of Martin (Buggsy) Goldstein?

A. No.

Q. Have you read about him in the paper?

A. Who? Goldstein?

Q. Yes.

A. I knew that he was executed.

Mr. Rosenthal: I am going to challenge this juryman.

The Court: Try it.

(William J. Koehler, of 817 Avenue R, was duly sworn.)

Mr. Rosenthal: Did your Honor get the last answer?

The Court: I did not.

Mr. Rosenthal: Will you have it read, and then tell the jury to disregard it?

(Last answer read.)

By Mr. Rosenthal:

Q. Mr. Koehler, you are now under oath, and if the questions [fol. 2224] that were addressed to you were re-addressed, would you make the same answer?

A. I would.

Mr. Turkus: There is no ground for challenge on that.

The Court: Any other counsel for defendant wish to question?

Mr. Rosenthal: May I discuss it at the bench with your Honor?

The Court: No.

Mr. Barshay: No questions on our part, sir.

The Court: Any questions, Judge Talley?

Mr. Talley: No, sir.

The Court: Overruled.

Mr. Rosenthal: We respectfully except.

Mr. Barshay: Respectfully except.

Mr. Rosenthal: I am not going to ask any more questions.

Mr. Talley: No questions.

Mr. Turkus: Mr. Kochler is satisfactory to The People of the State.

Mr. Rosenthal: Reserving all the exceptions taken as far as each defendant is concerned, we peremptorily challenge.

(The following talesmen were called and took seats in the [fol. 2225] jury box: Sol M. Goldschlager of 852 Greene Avenue; Thomas W. Madigan of 147 Hawthorne Street, and Arthur P. Kennedy of 1461 East 49th Street, Brooklyn).

By Mr. Turkus:

Q. Mr. Goldschlager, you look familiar to me. Were you on any jury since I have been a District Attorney?

A. Yes, I was.

Q. Did you sit through the trial? Was it one of those cases that went to conclusion?

A. I was excused.

Q. You got as far as you are now and then you did not complete the service?

A. That is right.

Q. Greene Avenue, is that called the Jefferson section?

A. Bushwick.

By the Court:

Q. Your number is around Tompkins.

A. Around Stuyvesant.

Q. What number?

A. 852. It is Greene corner Stuyvesant. Tompkins is the 600 numbers.

By Mr. Turkus:

Q. Was it in April or May of 1940 when you came into the box on that case where I was Assistant District Attorney?

A. That is right.

Q. Were William W. Kleinman and David Price defense lawyers in that case?

A. That is right, and also Sidney Rosenthal and I think Leo Healy—I am not sure that he was in it. No, he was not in it.

[fol. 2226] Q. Let us see if we got the situation right. There was Kleinman and Price for one defendant and Rosner and DeFoe for the second defendant?

A. That is right.

Q. And then thereafter Mr. Rosenthal came into the case, is that how you got his name?

A. That is right.

By the Court:

Q. Isn't there a Turkish bath right down there on Sumner Avenue around Kosciuszko?

A. No.

Q. Where is that bath?

A. I think there is a Turkish bath on—the nearest one I know is Manhattan Avenue near Broadway.

Q. I am talking about Sumner Avenue.

A. I don't know about it.

Q. It is only a few steps from where you are.

A. Not that I know of. I lived on that one block about eighteen years and I never heard of a Turkish bath on Sumner Avenue.

Q. There is one down there somewhere on Sumner or Throop. There was some trouble down there. I did not know whether you might have known about it.

A. I very seldom go up that way in all those years.

Q. You now nothing about the case apparently?

A. Only what I read in the papers.

Q. The case I have in mind?

A. About that, no.

By Mr. Turkus:

Q. Is there any familiarity with the names of Maione, Harry (Happy) Maione, and Frank (The Dasher) Abbam- [fol. 2227] dando, gained by something that you may have heard when you were awaiting call to the jury box in that other case?

A. Yes.

Q. In order to get right down to something that may save time, without my going through a complete examination, after you came to court and you reached as far as the jury box in that case which you told me about, did you read about that case thereafter?

A. Yes, I did. I followed it up very closely. In fact, I only read about it the other day.

Q. You saw that article in the *News* the other day?

A. Yes.

Q. Let me ask you this: As you sit there in the jury box now, if you were taken on this jury could you be fair to these defendants on the Rosen charge?

A. I don't think so.

The Court: Any challenge?

Mr. Cuff: Challenge for cause.

The Court: Try the challenge.

SOL M. GOLDSCHLAGER, residing at 852 Greene Avenue, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Goldschlager, you were a prospective talesman, were you not, in April or May of 1940, in a case of The People of the State of New York against certain defendants? In that case I, Turkus, was the Assistant District Attorney, and Messrs. Kleinman and Price and Rosner and DeFeo were the defense lawyers is that correct?

A. Yes.

[fol. 2228] Q. You got as far as the jury box and you were questioned by both the Assistant District Attorney and the defense lawyers?

A. That is right.

Q. You did not serve as a juror in that case?

A. No, I did not.

Q. You did follow that case with interest thereafter?

A. I did.

Q. And in response to a question that I put to you subsequent to that did you reply that you could not be fair to these defendants on the trial of the Rosen case?

A. That is right.

The Court: Any questions?

Mr. Cuff: None.

The Court: Sustained.

By Mr. Barshay:

Q. Is that because of what you read in the paper?

A. Newspapers and from hearsay.

The Court: Sustained.

By Mr. Turkus:

Q. Mr. Madigan and Mr. Kennedy, we will do this expeditiously because we have been at this job a long time. I will try to ask the questions of Mr. Madigan, and if you will listen to them, then I can go over your questions very quickly. Mr. Madigan, where do you live?

A. 147 Hawthorne Street.

Q. What section of Brooklyn is that?

A. Flatbush.

[fol. 2229] Q. Have you lived there for a number of years?

A. Yes, sir.

Q. Is Hawthorne Street in the vicinity of Parkside Avenue?

A. Yes, sir.

By the Court:

Q. Between Bedford and Rogers?

A. Yes, sir.

By Mr. Turkus:

Q. What is your profession or vocation, Mr. Madigan?

A. An architectural consultant.

Q. Are you in business for yourself in the practice of your profession?

A. No, I work for the Central Hanover Bank & Trust Company.

Q. I think I can go along rapidly with some of these questions. Has business in the past or in any other way have you come in contact with anyone in the clothing center or the garment center in Manhattan?

A. No.

Q. Or with any clothing truckers, especially in the clothing field; they truck clothes.

A. No.

Q. Are you familiar with the names of any officials of the Amalgamated Clothing Workers of America?

A. No.

Q. Do you have any contacts presently or have you had any in the past with persons in the Brownsville-East New York section of Brooklyn?

A. No.

Q. Or the Brooklyn waterfront?

A. No.

Q. There are nine lawyers here representing these three defendants. Can I say to you, as I said to another prospective [fol. 2230] salesperson, I do not mention the number to find any fault with the number of counsel in the case; defendants can have as many or as few lawyers as they choose; that is their right when they are tried in court. Do you know any of the nine whose names I mentioned? Did you hear me mention them?

A. I do not know any of them to speak to, if that is what you mean.

Q. Do you know any lawyer who specializes in the defense of criminal cases?

A. No.

Q. With respect to the District Attorney, who is Judge O'Dwyer, do you know him personally?

A. No.

Q. Or do you know intimately or personally any Assistant District Attorney on the staff?

A. No.

Q. I take it I may assume with you that you are in sympathy with law enforcement?

A. Yes.

Q. If selected as a juror in this case will you endeavor conscientiously to arrive at a just result?

A. Yes.

Q. Have you heretofore served as a juror in any criminal case?

A. Yes.

Q. Was it in the County Court?

A. Yes.

Q. And was it within recent years?

A. Approximately three years ago.

Q. Were any of the lawyers in that case in court now?

A. No.

Q. Did the case go to a conclusion?

A. Yes.

Q. Did you have the benefit of listening to the Judge's [fol. 2231] instruction on the law?

A. Yes.

By the Court:

Q. Do you know Mr. Geoghan?

A. I just know him by sight.

Q. He lives in your immediate locality?

A. That is right.

Q. Do you both belong to the same club?

A. No. I did belong to the club.

By Mr. Turkus:

Q. Part of the testimony in a criminal case frequently emanates from an accomplice. An accomplice is one who is a perpetrator in the commission of a crime with the other defendants. Do you, sir, find any fault either with the District Attorney of the county, Judge O'Dwyer, or with the prosecution of an indictment wherein the testimony of an accomplice or one of the perpetrators of the crime is used against the remaining defendants?

A. No.

Q. You will be instructed by the Judge on the law with respect to accomplices. You will be instructed not only as to the tests that you apply to the believability of an accomplice, but also on the principle of law that there can be no conviction upon the unsupported or uncorroborated testimony of an accomplice. Will you follow that instruction of law?

A. I will.

Q. And conscientiously endeavor to apply it to the facts of this case? Assuming that the Judge should tell you in his charge to the jury that the accomplice need not be supported [fol. 2232] and corroborated in every detail of his testimony, but if there be independent proof which is believed by the jury and which tends to connect the defendants and each of them with the commission of the crime, that the jury may find that to be sufficient corroboration, will you take that instruction of law?

A. I will.

Q. Is it clear to you as I said it to you?

A. That is right.

Q. Now, it may appear—and of course it will, in connection with an accomplice—that an accomplice himself admits his participation in the commission of crime, so that he admits he has committed the crime. It may develop that he has associated with criminals throughout all his lifetime, that he has participated in other crimes. Or, for example, it may be argued that he has a motive to testify. All of those are items that you consider, and you can properly consider in connection with weighing the believability of an accomplice. Do you follow me in that?

A. That is right.

Q. Will you keep uppermost in mind that all the tests that you apply to an accomplice or the tests that you apply to any witness, is to determine is that individual speaking the truth about these men on trial. And will you, if accepted as a juror, devote your mental faculties to ascertain that?

A. I will.

Q. Will you devote your mental faculties to ascertain [fol. 2233] does this accomplice speak the truth, not only about his participation, but about their participation as a group in the commission of this murder?

A. I will.

Q. It may be that you may not like an accomplice, as a matter of fact, you may dislike him because of his background, but will you bear in mind that it is not the test whether you like him or whether you dislike him; the test is does he speak the truth about this group or combination which participated in the commission of the crime. Do you understand that?

A. Yes.

Q. And will you, sir, if accepted as a juror, do that, find out if he speaks the truth about him?

A. I will try.

Q. It has been brought out by one of the lawyers who represents Buchalter that Buchalter has and is presently serving a long jail term for crimes he has been convicted of. What I want to know is this: Solely because Buchalter is being punished for other crimes for which he has been convicted, would you relax or deviate from a proper jury result on this murder charge?

A. No.

Q. It has also been brought out by one of the lawyers for Capone, and properly so—it applies to all the defendants—that defendants on trial are to meet only the accusation or the indictment in the charge for which they are being tried. Is that clear to you?

A. That is clear.

Q. And by the same token the duty of the District Attorney [fol. 2234] torney goes that far and no further, to establish guilt beyond a reasonable doubt on this specific charge and no other; do you understand that?

A. Yes.

By the Court:

Q. Any prejudice against capital punishment?

A. No, sir.

By Mr. Turkus:

Q. In its every aspect will you take the law from the Judge?

A. Yes.

Q. If accepted as a juror, will you deliberate with the other jurymen with common sense and understanding?

A. I will.

Q. And will you bear uppermost in your mind and devote your mental faculties to this issue, and that is the only issue in the case, have The People of the State of New York established guilt of murder in the first degree against Buchalter, Capone, and Weiss beyond a reasonable doubt, or are you satisfied the defendants are innocent? Will you devote your mental faculties to finding out that single issue in the case?

A. Yes.

Q. Should The People of the State of New York by the competent and believable evidence that they will present in this court-room, and the people that you will hear and see, satisfy you beyond a reasonable doubt that they are three guilty men, guilty of murder in the first degree—Buchalter, Weiss & Capone, and we satisfy you of that beyond a reasonable doubt, will you say that in your verdict?

A. I will.

[fol. 2235] Q. And will you say so without hesitation and without fear?

A. I will.

Q. Is there any reason under the sun why you cannot render justice in this case?

A. No.

Q. Mr. Kennedy, do you reside at 1461 East 49th Street?

A. Yes, sir.

Q. Is that called the East Flatbush section of Brooklyn or is it Flatbush?

A. Some people call it Flatlands.

Q. Have you lived there for a number of years?

A. Yes, sir.

Q. More than five?

A. No.

Q. That is a quiet, residential neighborhood, isn't it?

A. Yes.

Q. Did you ever live in any other part of Brooklyn before you lived in Flatlands?

A. Ocean Parkway.

Q. You are listed here as an assistant general agent. Is that correct?

A. Yes.

Q. By whom are you employed?

A. Bull Steamship.

Q. Do they have offices in Manhattan?

A. Manhattan and Brooklyn.

Q. Where are you employed, in Manhattan or Brooklyn?

A. I am employed in New York, but I have occasion to come here twice a week.

Q. Is the name Albert Anastasio familiar to you?

A. I have heard it mentioned around.

Q. Did you ever personally come in contact with Albert [fol. 2236] Anastasio?

A. No, sir.

By the Court:

Q. Bull Steamship Company, and I think also Mr. Bull himself have sort of reciprocal relationship with the Savannah Line and the Eastern Steamship; am I right?

A. Yes, sir.

Q. And also the line that goes down to Norfolk. Do you have anything to do with those steamship companies?

A. Old Dominion.

Q. In the handling of freight. You never heard of Anastasio?

A. I have heard of him.

By Mr. Turkus:

Q. And you did tell me that you had no contact with him of any kind?

A. Heard of him.

Q. Your duties, then, bring you into connection with merchandise on the Brooklyn waterfront?

A. Yes, my duty is to get freight for the boats. I go out and call on the trade.

Q. Do you have anything to do with the handling of the freight on the docks?

A. No, sir, not directly.

Q. In other words, to make sure I understand it clearly, and pardon me if I do not understand your duties exactly—we cannot know everything—you call upon customers who have freight to deliver, and you secure their trade?

A. That is right.

Q. For the steamship line that you represent?

A. Exactly.

Q. And those would be merchants throughout the city, [fol. 2237] manufacturers?

A. That is right.

Q. Does business bring you into contact with any clothing manufacturer?

A. Yes, sir.

Q. Which manufacturer, do you know his name?

A. The one up on 34th Street and 8th Avenue, I think it is Tutman. They make children's dresses.

Q. Do you come in contact with anyone in your business who manufactures men's clothing?

A. Yes.

Q. Who is that?

A. Hochberg.

Q. Where is his place of business?

A. East 19th Street, I think.

Q. Off Fifth Avenue?

A. Somewheres there.

Q. Do you know the trade name that he uses?

A. I really do not know.

Q. Did you ever come in contact with Raleigh Clothes?

A. No.

Q. Have a place down in Baltimore, had one at 200 Fifth Avenue, New York.

A. These are only people who have freight off the West Indies.

Q. So that the freight you solicit is freight going to the West Indies?

A. That is right.

Q. Does your livelihood depend upon the good will of anybody in that clothing industry?

A. Yes.

Q. Do you know any clothing truckers?

A. Express company. They deliver, they truck a lot of clothes.

Q. Clothing trucking is a specialty.

[fol. 2238] A. I know.

Q. There are certain clothing truckers. Do you know some of these clothing truckers who are engaged in that line?

A. I know of some of them.

Q. You mean you do not deal with them personally?

A. No.

Q. Did your business there bring you in contact with any union officials in connection with the manufacture of garments?

A. No.

Q. Or with the distribution of clothing?

A. I never had occasion.

Q. How many of these accounts have you got in this clothing district?

A. I would say about a dozen up there in the midtown section, in the garment section.

Q. And have you been going there for a number of years?

A. Yes, for the last thirteen.

Q. Is the name of Lepke a familiar name to you?

A. Definitely.

Q. Gurrah a familiar name?

A. Yes, I heard it.

Q. Curley Holtz?

A. I don't remember.

By the Court:

Q. Were you a witness in this court once?

A. Not a witness; I was a juror.

Q. A case involving a truckload of tobacco?

A. No, sir.

By Mr. Turkus:

Q. I am going to get down to business as fast as I can with you, Mr. Kennedy. For a number of years now you [fol. 2239] have been going into the clothing and garment centers, you have a familiarity of the name of Lepke and Gurrah. Is the name of Weinstein a familiar name to you, or Katz, local officials?

A. No.

Q. Are the names of people who are in the fur industry familiar to you?

A. No.

Q. While you have been going into this garment district did you hear anything said about Lepke or Gurrah?

A. Yes, most uncomplimentary.

Q. Just be careful. We have taken a long time in getting the jurors we want, and we have to be very cagey with this.

The Court: Is there a challenge?

Mr. Barshay: Yes.

The Court: You have an opinion, haven't you?

The Talesman: Certainly have.

The Court: Try the challenge.

ARTHUR R. KENNEDY, residing at 1461 East 49th Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Kennedy, in substance, when you were sitting in Chair 12, the following was elicited in response to questions: That you are in the steamship line as an assistant general agent, that your business presently and has in the past brought you in—

[fol. 2240] By the Court:

Q. Were your answers all true?

A. Yes.

The Court: Any questions?

Mr. Barshay: No questions.

The Court: Counsel for defense?

Defendants' Counsel: No.

The Court: Sustained.

By Mr. Barshay:

Q. Mr. Madigan, you live in that large apartment house?

A. I live in a private house.

Q. Is that right next?

A. Second house away.

Q. Do you know police officials who live on that block?

A. No.

Q. Mr. Madigan, have you read about this case?

A. I have some time ago.

Q. How long ago?

A. The beginning of the trial.

Q. May I know the papers you read?

A. The *Sun*.

Q. Any other?

A. Brooklyn *Daily Eagle*.

Q. Did you read about it more than once?

A. No, I cannot say that I did.

Q. Did you form an opinion in respect to what you read?

A. No, I just glanced through the paper, that is all.

Q. Did you form any impression about anything you read at all?

A. No.

[fol. 2241] Q. Have you read, by any chance, the life of Judge O'Dwyer in any paper?

A. No.

Q. Did you hear any lectures about crime and its prosecution by any Assistant District Attorney or public official?

A. Three or four years ago on juvenile delinquency, if that is what you want to know.

Q. I cannot guess at what you heard, but I know there are lots of lectures given around town. Do you know who gave it?

A. Mr. Geoghan himself.

Q. I think you said you knew Mr. Geoghan.

A. I knew of him.

Q. Did you ever hear any speeches on the radio with respect to crime?

A. I may have listened to them.

Q. Did they impress you so that your judgment would be influenced against people charged with the commission of crime?

A. No, I would not say that.

Q. Did you form any impression about this case or the people involved therein as you sat here listening to other jurors being questioned?

A. No.

Q. You said you had experience before. May I know whether it was in a civil or criminal case?

A. It was a criminal case.

Q. Was it an Extraordinary Term over in the Supreme Court?

A. Supreme Court.

Q. Mr. Amen prosecuted, or someone in his office?

A. Todd.

Q. Was it Max Silverman?

Mr. Turkus: I object to it. Mr. Barshay is going into [fol. 2242] a specific case.

Mr. Barshay: Your Honor, if that was the matter, the only reason I am going into it is that name was mentioned by Mr. Turkus, otherwise I would not. He said no, so there is no use pressing the question.

Mr. Turkus: I won't press it.

Q. Did that case come to a conclusion?

A. Yes.

Q. Was anybody in this court here counsel in that case?

A. Not that I know of.

Q. Mr. Cuff?

A. No.

Q. Do you recall whether Mr. James I. Cuff was a witness in that case?

A. I do not. I heard of Mr. Cuff.

Q. In other words, if he were a witness, you would remember him?

A. I would.

Q. I think you said the charge was perjury. Was there another charge involved in that case? Do you know anyone in the Police Department?

A. I know policemen, if that is what you mean.

Q. They may be connected with this case. That is the reason we want to know.

A. Policemen?

Q. Patrolmen?

A. Yes.

Q. Have any of them spoken to you about this case?

A. I have not seen them in some time.

Q. Do you know anybody at all connected with the prosecutor's office in any way whatever?

A. Not that I know of.

Q. Or, especially, do you know Mr. Turkus, Mr. Joseph, [fol. 2243] Mr. Klein?

A. No.

Q. Do you belong to any political organization?

A. No.

Q. Did you?

A. No.

Q. I thought you said you once belonged to that club. Did you belong to the club on Bedford Avenue at one time?

A. I did.

Q. Do you intend to participate in the forthcoming election?

A. No.

Q. At any time did you serve as a grand juror?

A. No.

Q. Were you ever the victim of a crime?

A. No.

Q. Other than the experience you told me about, have you had jury experience?

A. Called for cases, been called to the court.

Q. As a special juror?

A. Yes.

Q. But never served?

A. That is right.

Q. Were you ever examined?

A. Yes.

Q. I take it you were excused?

A. Yes.

Q. May I know how often?

A. This is about the fourth or fifth time in the past three years, I would say.

Q. Did you ever belong or do you now to any society for the prevention of crime?

A. No.

Q. Or to any law enforcement agency?

A. No.

Q. How long have you been with the bank, sir?

A. Going on seven years.

Q. Does any State agency, to your knowledge, use your bank as a depository?

A. I could not tell you.

[fol. 2244] Q. In other words, you confine your activity to the architectural part?

A. Yes.

Q. Have you ever heard of the defendants?

A. Saw it in the papers.

Q. Our client's name is Louis Buchalter. Has the fact that he is referred to as Lepke prejudiced you?

A. No, sir.

Q. Does the fact that it will come out that he is now incarcerated for a period of years, forty-four to seventy, will that prejudice you?

A. No, sir.

Q. Against him?

A. No, sir.

Q. Now, is there present in your mind any thought, idea, expression of opinion or expression of any kind or nature which is detrimental to the defendants or any of them?

A. No, sir.

Q. Are you in accord with the principle that they are presumed innocent under the law of the charge pending against them?

A. Yes.

Q. Do you believe that the Grand Jury can indict an innocent man?

Mr. Turkus: I object.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. Are you of the opinion that because a Grand Jury found an indictment against a man, charging him with crime, that there must be something to the charge?

Mr. Turkus: Objected to. That is a legal question.

The Court: Question of law. An indictment is just an accusation.

The Talesman: An accusation?

The Court: You know it is not evidence?

[fol. 2245] Talesman Madigan: It is not evidence?

The Court: Will you follow the instructions of the Court that it is not evidence?

Talesman Madigan: I will.

Q. In keeping with the Court's instructions, now may I ask: Do you believe it is possible for a Grand Jury to accuse by indictment a person who is innocent?

Mr. Turkus: Object to it.

The Court: Sustained. If the Grand Jury did not accuse innocent people, there would be no acquittals.

Mr. Barshay: I respectfully except to that remark. Your Honor has a right to say what he thinks, and I ask for the declaration of a mistrial.

The Court: It is utterly absurd.

Mr. Barshay: I respectfully except to that remark and I will go ahead. Let the record show my exception.

The Court: Proceed. The Court is patient and wants it appreciated. A great many questions are asked which in the Court's notion are objectionable. The examination is unduly prolonged, and the Court must maintain the greatest patience and courtesy to counsel.

Mr. Barshay: Respectfully except.

The Court: No matter how the Court feels about it, the Court has to submit and be patient to attorneys. Kindly proceed. There has been summation here. There has been [fol. 2246] charge on law. It has gone far beyond anything I have ever heard of in my life in relation to the examination of talesmen preliminary to trial. Exception to all counsel for defense. Now proceed.

Mr. Barshay: I have no further questions.

By Mr. Talley:

Q. Mr. Madigan, do you understand that an indictment does not import guilt, it is merely an accusation in writing?

A. I do.

Q. And that it must be supported by evidence that will satisfy a jury beyond a reasonable doubt before a verdict of conviction can be had?

A. That is right.

Q. That is quite plain?

A. Yes, sir.

Q. And after the Court charges you with respect to what is and is not a reasonable doubt, if you have a reasonable doubt, a doubt founded on reason, a doubt for which you could give a reason if required, if you have such a doubt as to the guilt of any of these defendants, will you resolve that doubt in their favor?

A. I will.

Q. Do you understand that the presumption of innocence, which is a substantial right under our process and forms of law, accompanies every defendant that comes into a criminal trial right up to the time the case is submitted to a jury?

A. Yes, sir.

Q. And do you understand, Mr. Madigan, that the District Attorney, representing The People, has the burden of proof throughout the trial and that that burden never shifts at any time from the shoulders of The People, represented by the District Attorney, to the defendants in the case?

A. That is right.

Q. That is quite plain to you?

A. Yes.

Q. And if the Court charges you on these matters, as he will, whether you agree or do not agree with the law as charged by the Court, you will follow those directions, will you not?

A. Let me get that straight. I did not quite get that question.

Q. I am glad you called my attention to it, because I tried to speak in words of one syllable. I do not know whether I succeeded. If the Court charges you that the presumption of innocence always rests with the defendants up to the conclusion of the trial, and that the burden of proving the guilt of those defendants rests not upon the defendants, but always upon the District Attorney, representing The People, will you follow that advice on the law from the Court and be guided by it in arriving at your verdict?

A. I will do that.

Q. That is plain, isn't it?

A. That is right.

Q. From anything that you have read or any conversation that you have had, do you come into this court with any impression as to these defendants, or any of them?

A. No.

Q. So far as you are concerned, they are strangers to you [fol. 2248] in every respect, is that right?

A. That is right.

Q. You read nothing about this particular charge against them, did you?

A. Not that I remember.

Q. Did you read anything about them in connection with any other matter?

A. I said I read in the paper some time ago.

Q. Tell me again.

A. I said I read something in the paper about a month ago, but I don't just remember what it was about now.

Q. Did that article that you read, or articles that you read, leave any impression on your mind with respect to these defendants?

A. No, I would not say that.

Q. Are you quite sure that it did not?

A. That is right.

Q. When you say, "I would say not," that does not mean you have any doubt as to your own mental status?

A. No doubt at all.

Q. No doubt there is nothing you read or heard that in any way has left an impression on your mind as to these defendants?

A. That is right.

Q. Is there any reason that you know of which possibly you have not been interrogated, why you could not give these defendants a fair and impartial trial?

A. No reason.

Q. If the testimony, as indicated by the District Attorney, will rest very largely upon the testimony of accomplices, will you require that The People support the testimony of those accomplices by independent evidence not connected with the accomplices that will tend or have a tendency to connect these defendants with the commission of the crime?

Mr. Turkus: I object to the preamble of the question.

By the Court:

Q. Assuming that the Court shall charge you that you should do that, will you follow that instruction?

A. I will follow the instructions of the Court.

By Mr. Barshay:

Q. And you will require that burden and obligation to be fulfilled by the District Attorney before you would arrive at a verdict in this case; is that right?

A. That is right.

Mr. Barshay: I have no further questions.

By Mr. Rosenthal:

Q. Mr. Madigan, have you any relation, Frank Madigan?

A. I have a brother.

Q. Is he in the real estate business?

A. No.

Q. There is a Madigan court clerk. Is he any relation to you?

A. No.

Q. You said you were called as a special juror four or five times in the last three years. Is that right?

A. That is right.

Q. Was that in the County Court?

A. That is right.

Q. Did you actually attend in court on each of those occasions?

A. I believe I did.

Q. Can you tell me when was the last occasion, approximately [fol. 2250] and who was the judge?

A. Judge Brancato.

Q. How long ago?

Q. You were one of the lawyers. I can't tell you.

Q. That was not a capital case. I was one of the lawyers before Judge Brancato in a capital case? You must be in error.

A. No, I am wrong.

Q. The occasion that you are speaking about was about nine months ago?

A. I just don't remember.

Q. Approximately?

A. Between the season.

Q. When other than that were you called as a special juror, actually attend court, in the last two years?

A. Each time I was called I had to attend.

Q. I don't want you to take offense. I merely ask you for an approximate time and the judge. Did you appear before Judge Taylor in the last two years?

A. No, I never appeared before Judge Taylor.

Q. Did you appear before Judge Fitzgerald in the last two years?

A. I believe I did.

Q. Was it a capital case you appeared in?

A. I think it was. The other three times were capital cases.

Q. You sat in the room while the other jurymen were being questioned; is that correct?

A. Well, one case.

Q. Was the time when you were in before Judge Fitzgerald around May of last year?

A. I think it was.

Q. And do you recall, or would you recall whether Mr. [fol. 2251] Turkus was the Assistant District Attorney?

A. I would not recall that.

Q. Do you recall whether Mr. Turkus was the Assistant District Attorney at any time within the last two years when you appeared?

A. No.

Q. When you say you don't remember, I assume you mean you cannot recall whether he was or whether he was not; is that correct?

A. That is right.

Q. In the article which you read prior to your being called for jury service, was there any mention, to the best of your recollection as to the particular charge on which the defendants now stand trial?

A. I don't remember.

Q. Can you tell me about how recent was the last time that you read any article?

A. I told you it was about a month ago.

Q. Do you read the *Mirror* at all, sir?

A. If I happen to pick it up, I read it.

Q. Do you recall whether you read any articles in the *Mirror* dealing with any of the defendants here?

A. (Answer inaudible.)

Q. The articles which you read in the newspaper, did you form any impression whatsoever as to any of the defendants on trial?

Mr. Turkus: I object to it.

The Court: Overruled.

Mr. Turkus: The juror has said he does not even remember what he read.

[fol. 2252] Mr. Rosenthal: I said in the newspapers.

Mr. Turkus: He has already said that.

The Court: Not to Mr. Rosenthal.

Mr. Rosenthal: I do not know that he said it to anybody.

Mr. Turkus: Yes, he did.

Q. So as to make it clear to you, Mr. Madigan, just the same as Mr. Turkus has a job here to perform, do you realize that each and every attorney here has a particular, separate job to perform here?

A. Yes.

Q. I merely represent one defendant, Mr. Capone, and whatever questions I address to you or any other jurymen is with an idea of finding out on behalf of my client whether I consider that he can get a fair deal; is that clear to you? And is it clear that when Mr. Barshay gets up he is interested in the defendant Buchalter and his questions are addressed in that direction; is that clear?

A. Yes.

Q. And when Judge Talley gets up, his is directed to defendant Weiss, and he has a duty to perform as to him; is that right?

A. Yes.

Q. You do not find any fault with having to answer three different lawyers representing three separate people, do you?

A. No.

Q. You understand, sir, although you have not been in the court-room here, that each one of these men, although being tried together, each one is entitled, in fact, individually [fol. 2253] ally to a separate trial at your hands? Do you understand that?

A. Yes.

Q. And each one is entitled to a separate determination according to the way the evidence from the witnesses apply to that particular individual; is that clear?

A. That is clear.

Q. So if I do, sir, happen to address a question to you a second time, you will not take offense at me for that reason, will you?

A. No, sir.

Q. Now then, may I ask whether or not by reason of anything that you may have read you have formed any impression one way or the other in so far as any of the defendants are on trial, irrespective of the particular case for which they are being tried?

A. I have not formed an opinion.

Q. So that your mind is clear and open at this time?

Mr. Rosenthal: I have no further questions.

Mr. Barshay: No further questions.

Mr. Turkus: Mr. Madigan is satisfactory to The People of the State.

Mr. Rosenthal: Peremptory.

(The following talesmen were then called and took their places in the jury box: Benjamin Cohn, of 359 Crown Street; John D. Butt, 1373 Dean Street; Frederick G. Harris, 224 Lincoln Road.)

The Court: Mr. Cuff, you will have to cancel your dinner [fol. 2254] engagement. It is nearly half past four and not a single juror has been selected. We are going to sit late.

By Mr. Turkus:

Q. Mr. Cohn, do you live at 359 Crown Street?

A. Yes, sir.

Q. Is that called the Crown Heights section?

A. Yes, sir.

Q. Have you lived in the Crown Heights district for a number of years?

A. Yes, sir.

Q. How many years?

A. Fourteen years.

Q. Did you live in any other section of Brooklyn?

A. Previously.

Q. Yes?

A. Carroll Street.

Q. Would that be on the other side of the park in the Crown Heights section?

A. Right near Albany Avenue.

Q. You are listed as by profession being an architect; is that correct?

A. Yes.

Q. Do you practice your profession for yourself or are you employed?

A. For myself.

Q. Where do you maintain your office?

A. 191 Joralsmon Street.

Q. Have you had a Brooklyn office for a number of years?

A. Yes, sir.

Q. More than ten?

A. Yes, sir.

Q. As an architect do you draw plans for various builders throughout the city?

A. Yes, sir.

Q. Did you draw any plans or have any contacts with [fol. 2255] people in the Brownsville-East New York section of Brooklyn?

A. Years back.

Q. How many years ago was that?

A. About fifteen or more.

Q. Are you presently in contact with any builders who either have their places of business in Brownsville-East New York or who engage in construction work in that area? Are you presently in contact with those people?

A. Yes.

Q. Do you see them in your every-day course of business?

A. Yes.

Q. Are you dependent, in earning your livelihood on the good will of these people?

A. Yes, sir.

Q. Are these builders who have dealings with electrical contractors and with painting unions?

A. That is right.

Q. Do you come in contact with union officials in the building trades?

A. Not much.

Q. How recently have you had any contact with people in the Brownsville-East New York area, those people upon whom you explain to me you are dependent for your livelihood?

A. I did not do any work for quite a while. I know someone on Herzl Street.

Q. What is that, a builder who lives on Herzl Street?

A. Yes.

Q. Is this a one-man office, or have you partners, or how does it work?

A. I am in charge of the office now. My brother is ill, so I take care of it; I have one employee.

[fol. 2256] Q. Did anybody in your business experience talk to you about Brownsville and East New York? For example, I know that is very broad, I will make it a little more specific—about people in the painting union or people in the electrical union?

A. Occasionally we talk about different unions; nothing specific.

Q. In anything that you have heard, is the name of Martin (Buggsy) Goldstein a familiar name to you?

A. I heard of that name.

Q. The name of Harry (Pittsburgh Phil) Strauss? The name of Albert Anastasio?

A. No.

Q. Gesuele Capone?

A. Yes.

Q. Do you come in contact with union officials in the Plasterers Union?

A. I have not had much occasion.

Q. Would the familiarity of the name Gesuele Capone, is that due to some plasterer's contracts?

A. I know the name.

Q. What did you say?

A. Probably through plasterers.

By the Court:

Q. Is it more than a name to you? Do you know who the person is?

A. No.

Q. All you know is it has a familiar sound?

A. That is right.

By Mr. Turkus:

Q. Has it been something that you heard in the discussion of your business? That is what I am driving at. Or [fol. 2257] is it just a familiar name as it is said?

Mr. Turkus: I think there is a question of bias.

The Court: He said he cannot place it.

Q. Mr. Cohn, if you will speak up loudly, all the lawyers must hear the answers.

By the Court:

Q. Where is your office?

A. 191 Joralemon Street.

Q. Been there how long?

A. About six or seven years.

Q. And what particular builders are your stock lines?

A. I have various.

Q. What do you specialize in, any particular section?

A. No, not particular, Brooklyn, Queens.

Q. All over?

A. Yes.

By Mr. Turkus:

Q. Were you in any other profession or vocation before you were an architect?

A. No, sir.

Q. Does your business bring you into contact with members of the bar, lawyers?

A. I know lawyers. Sometimes we have to make a selection.

Q. What I am specifically anxious to know is this: In this case do you know any of the nine lawyers, did you ever meet any of them through business in any way? I will tell you who they are if you have forgotten the names. Have you forgotten them?

A. I don't recognize any of them exactly.

Q. Is the name of Hyman Barshay, a former Assistant [fol. 2258] District Attorney, is that familiar to you?

A. I have heard the name, yes.

Q. Did you ever have any business with him or his law associate, a man named Gittelson?

A. I don't think.

Q. Or Mr. Bertram Wegman, a former Assistant United States Attorney, and his partner, Mr. Climenko? They represent Buchalter. Did you ever do business with those lawyers?

A. No.

Q. Or anybody in their law offices? With respect to the defendant Weiss, he is represented by a former Judge of the Court of General Sessions, Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Kriendler. Did you do any business with any of those three lawyers?

A. No, sir.

Q. Or anyone in their offices?

A. No.

Q. With respect to Capone, he has Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Emanuel Rosenberg. Do you know any of those three lawyers through business?

A. I heard of them but I do not know them.

Q. Do you know any lawyer, any member of the bar who specializes in the defense of criminal cases?

A. I don't think so.

Q. Since you received your notice, did anybody speak to you about the case?

A. No, sir.

Q. Did you ever hear any discussions about the Rosen case, the killing of a man named Joseph Rosen? Did you ever hear anything from any of your business contacts?

A. No.

[fol. 2259] Q. Have you ever served on a jury before, Mr. Cohn?

A. Yes, sir.

Q. Has it been in a criminal case?

A. No, sir.

Q. A civil case?

A. Yes.

Q. Was it in the Supreme Court?

A. That is right.

Q. How long ago?

A. About two years.

Q. Were any of the lawyers in the court-room in that case, any of the lawyers who are here now?

A. No, sir.

Q. Is your hearing good?

A. I think so.

Q. It is imperative that the jury——

By the Court:

Q. Have you any feeling against capital punishment?

A. Not particularly, but——

Q. Have you such a feeling against capital punishment that it would prevent you from finding a verdict of guilty if the evidence indicated the defendants' guilt of murder in the first degree?

A. I don't like to see anybody punished.

By Mr. Turkus:

Q. I do not hear you.

A. I don't like to punish anybody.

Q. Nobody relishes punishment. We have all got a job to do here. I have got a job to prosecute them and the jury

has got a job, if I prove them guilty beyond a reasonable doubt, of doing their duty courageously. If you have something in the back of your mind about capital punishment or any kind of punishment, now is the time to talk up.
[fol. 2260] A. I am not in favor of capital punishment.

By the Court:

Q. Would it prevent you from finding a verdict of guilty if the defendants are proven guilty of murder in the first degree?

A. Well—If it is proper evidence, I guess I would do the right thing.

By Mr. Turkus:

Q. I think you said to the Judge that you are not particularly in favor of punishment.

A. Yes.

Q. Would that enter into your mind when you are deliberating the case, your feeling that you are not particularly in favor of punishment?

Mr. Barshay: I object to that question.

The Court: Overruled.

Mr. Barshay: Respectfully except. It is not a correct statement of the law.

Q. Will you give me an answer, sir? Did you lose the question?

A. Yes, sir.

Q. (Question read.)

A. It may prejudice me.

Q. Yes. So that, as it has been brought out by one of the lawyers for Buchalter that he has been convicted of past crimes and he is serving a long jail sentence, would not that feeling that you have cause you to relax your duty in this case?

A. It would.

Mr. Turkus: Challenge.
[fol. 2261] The Court: Try it.

BENJAMIN COHN, of 359 Crown Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Cohn, if I were to repeat the questions that I put to you about your dependency upon certain builders in Brownsville and East New York for a livelihood and about punishment and about relaxing your duty as a juror, would you make the same answers?

A. Yes, sir.

Q. And would those answers be true?

A. Yes, sir.

By Mr. Barshay:

Q. Mr. Cohn, if the Court shall tell you that punishment has nothing to do with this case and you must not even discuss it or consider it, will you follow that instruction of the law?

A. I understand that.

The Court: What?

The Talesman: I guess I would.

The Court: Talk out loud. We cannot be telling you all the time to talk out.

The Talesman: I cannot speak.

The Court: You can if you wish.

Q. Do you understand my question?

A. No.

Q. If the Judge shall tell you, if you are taken as a juror, that the question of punishment is not for you, you must not consider it, it is fixed by law, you have nothing to do with it, [fol. 2262] will you follow that instruction of law?

A. Yes, I will.

Q. You won't consider it?

By Mr. Turkus:

Q. Mr. Cohn, didn't you tell me that you are not particularly in favor of punishment?

A. That is right.

Q. And didn't you tell me as you sat there in Seat 10, that, as it has been pointed out by one of Buchalter's lawyers that he has been convicted of past crimes and he is now

serving a long jail term, that you would relax your duty in that case as a juror?

Defense Counsel: I object to it. That has nothing to do with this challenge.

The Court: Overruled.

Defense Counsel: Exception.

Q. Was your answer yes?

A. I did not hear you.

Q. It has been pointed out by one of Buchalter's lawyers that he is presently paying the penalty for other crimes that he has been convicted of and that he is going to be in jail for a long time. Is that clear to you?

A. Yes, sir.

Q. And am I correct in understanding you to say that you are not in favor of punishment?

A. Yes.

Q. And am I further correct that you said that you would be inclined to relax your duty in this charge, having in mind that Buchalter is being punished for other crimes?

Mr. Climenko: If your Honor pleases, I object to that [fol. 2263] upon the ground that it assumes a state of facts not in the record as to this talesman.

The Court: Overruled.

Mr. Climenko: Exception.

Q. Is that correct?

A. Yes.

Q. If that is your state of mind, Mr. Cohn, that you are against punishment and that you would relax your duty, how can you lay that state of mind aside?

A. I am against capital punishment.

Q. You are against capital punishment?

A. Yes.

Q. And you have a conscientious scruple?

Mr. Cuff: Am I entitled to a ruling on my objection?

A. Yes.

The Court: Overruled.

Mr. Turkus: The talesman has now stated he has a conscientious scruple against capital punishment. I press the challenge.

The Court: Any more questions?

By Mr. Barshay:

Q. You signed an affidavit qualifying as a special juror, did you not, Mr. Cohn?

A. Yes, sir.

Q. And did you read it before you signed it?

A. Yes, sir.

Q. And there were you asked the question whether you have any conscientious scruples against capital punishment and did you say in that affidavit you did not?

A. (No answer.)

[fol. 2264] Q. Do you remember that?

A. I am not in favor of capital punishment. Of course, if the Judge rules, I would follow out his Honor's—, whatever he wanted.

The Court: You understand a murder trial is not a debating society.

(Talesman speaks to the Court.)

Mr. Barshay: No further questions.

The Court: Sustained.

By Mr. Turkus:

Q. Mr. Butt and Mr. Harris, I will try to make these questions as brief as I can, and if Mr. Harris will listen to you when you make your responses, and if you have any disagreement with his answers, when I come to you you tell me, and we will know where we are and try to get through this thing quickly. Mr. Butt, you live at 1373 Dean Street?

A. That is right.

Q. What do they call that district?

A. Bedford.

Q. Have you lived there for a number of years?

A. About twenty-five years.

Q. With respect to your vocation or your profession, it says "V. P." I assume that means vice-president?

A. That is right.

Q. What kind of a corporation is that?

A. The Seamen's Bank for Savings.

Q. Have you been connected with the banking institution [fol. 2265] for a number of years?

A. Three years.

Q. Prior to that time what was your business?

A. I was in the real estate.

Q. In business for yourself?

A. That is right.

Q. And where was your office?

A. 522 Fifth Avenue.

Q. In Manhattan?

A. Manhattan.

Q. What I am particularly desirous of knowing is this: whether any of the prospective talesmen have had any contacts with manufacturers of men's or ladies' clothing or with clothing truckers, any personal contacts. Have you?

A. No, sir.

Q. Or any personal contacts with people in the Brownsville-East New York section of Brooklyn?

A. No, sir.

Q. May I go along with the understanding that both of you gentlemen are in sympathy with law enforcement?

A. That is right—right.

Q. I have mentioned the names of these nine lawyers that represent these three defendants at the bar. I repeat to you, as I did to another juror, that I do not make mention of the number of lawyers because I find any fault with it. Defendants on trial here have rights of employment of as many or as few counsel as they choose, or whatever talents they choose that these lawyers have, so I do not mention that for any fault finding, but merely to find out if there is any acquaintanceship with any members of the bar who [fol. 2266] are defense counsel in this case. Do you know any of the nine?

A. I do not.

Q. Or do you?

A. Personally, no.

Q. Do either of you gentlemen know any member of the bar who specializes in the defense of criminal cases?

A. No. No.

Q. Mr. Harris, I will just get to you for a minute. 224 Lincoln Road, that is Flatbush?

A. Yes.

Q. Have you lived in the Flatbush district for a number of years?

A. Yes, I have.

Q. You are listed as a credit manager.

A. Secretary and treasurer of the company.

Q. And what is the nature of the company's business?

A. Wholesale coffee, tea, and spices.

By the Court:

Q. Whereabouts?

A. 190 Franklin Street, New York City.

Q. Hudson Street?

A. It is a block over from Hudson Street on Greenwich and Franklin.

By Mr. Turkus:

Q. Mr. Butt, do you know the District Attorney of the county, Judge O'Dwyer?

A. No, sir.

Q. Or do you know any Assistant District Attorney on his staff?

A. No, sir.

Q. Specifically, do you know Assistant District Attorney Joseph, Klein, or Turkus?

A. No, sir.

Q. It has been pointed out here by one of the lawyers for [fol. 2267] the defendant Buchalter that his client has been convicted of other crimes, the commission of other crimes, and is presently paying the penalty for these offenses. Would you, if selected as a juror, permit yourself to deviate from a proper result in this case solely because Buchalter is in jail for other offenses?

A. No.

Q. Will you, if accepted as a juror, try the question of guilt or innocence for murder in the first degree on the evidence that you get in the court-room?

A. Yes.

Q. With respect to another point brought up to other talesmen by another of the defense lawyers, which applies to all the defendants, that they are here to meet the charge of murder in the first degree alleged in this indictment, and that alone, and that is properly stated to the jury, they are here to meet that one issue. By the same token do you understand that it is only the duty of the District Attorney, no more and no less, we cannot go further, and we cannot stop short, to establish guilt of that murder charge beyond a reasonable doubt?

A. Yes.

Q. What I want to find out, Mr. Butt, is whether you have any prejudice against either the District Attorney of the county or against the prosecution wherein the prosecutor has accepted the testimony of an accomplice and breaks or solves a murder case from the inside. Do you have any prejudice either against the prosecutor or against the prosecution of the indictment?

A. No.

Q. When I use the expression about solving a case or breaking it from the inside, you are not to gather from any statement of mine that this case has been broken or solved from the inside. That is what the District Attorney of the county must prove to you from the witnesses in the courtroom; you understand that?

A. Yes.

Q. But that is the only way I can phrase the question, or the only way the defense lawyers can phrase the questions is to state it in simple language so that the jurors will understand them as they speak. Nothing that either of the lawyers say on either side in this preliminary or voir dire examination is proof. You cannot convict the man on what counsel says. You convict him on what is produced in that chair and what documents and what witnesses you have got to establish a case, or exhibits. So that I can go along with you, Mr. Butt, can I not, that you have no inherent bias or prejudice or no fault to find either with the prosecutor or with the prosecution in which accomplice testimony is used; is that correct?

A. That is correct.

Q. Now, with respect to the believability of an accomplice, there will be rules of evidence that the Judge will give you, or tests, as they are called, to apply to that type of witness. Do I make myself clear? There will be tests given by the Judge that you apply to the believability of an accomplice witness. For example, the Judge will indicate to you by his charge that a man who himself admits he was a participant in the crime, his testimony must be weighed carefully and cautiously. Will you apply all the tests that the Judge gives you to the accomplice witness in the case?

A. (No answer.)

Q. Or haven't I made myself clear?

A. Yes.

The Court: That is a matter for the defense to ask.

Mr. Turkus: It is something that I want to go beyond in my question. I have got to do it that way.

Q. What I want to find out—that was a preliminary question, preliminary to this—that no matter what rules you apply to the believability of an accomplice witness, that the purpose of applying those tests is to find out does he tell the truth. Is that right?

A. Yes.

Q. And will you, if accepted as a juror, apply every conceivable, logical test to find out does the accomplice tell the truth?

A. Yes.

Q. Not only does he tell the truth as to himself, but as to them, does he tell the truth as to them? Does he tell the truth as to them as a group or combination participation in the killing of the victim named in the indictment. Is that clear to you?

A. Yes.

Q. That the purpose of applying every test that you get from the Judge and every common-sense test and rule that you have from your own experience is to find out does this [fol. 2270] accomplice speak the truth about this group or combination who killed Rosen. Do you understand that?

A. Yes.

Q. And will you, if accepted as a juror, devote your mental faculties to find that out?

A. Yes.

Q. Now, the Judge will tell you either in words or substance that there can be no conviction upon the unsupported or uncorroborated testimony of an accomplice. Is that clear to you? In other words, the Judge will tell you as a matter of law if that is all the prosecutor had you have got to dismiss the case, you have got to find them not guilty. But he will also tell you other things about corroboration. For example, should he charge you this in words or substance, the prosecution need not establish by independent proof each and every detail of an accomplice's testimony; that the prosecution need not do; is that clear to you?

A. Yes.

Q. And if he continues to explain to you that the obligation of the prosecution is to have independent evidence which is believed by the jury and which tends to connect the

defendants and each of them with the commission of the crime, if he gives you that instruction of law, will you follow that?

A. Yes, sir.

Q. And will you, with common sense and understanding, apply it to the facts in this case?

A. Yes.

Q. Doing a job as juror in a criminal case is the doing of one thing. It is not a hard task intellectually.

[fol. 2271] Mr. Barshay: I object to that statement.

The Court: I don't see, at the conclusion of this case, how anything can be left to the Court to charge, the jury is so thoroughly instructed on the law before they are even accepted.

Mr. Turkus: All right, I will withdraw the law.

Q. Even if I say it, that does not make it the law with you, only when Judge Taylor says it.

Will you devote your mental faculties to ascertain have The People of the State of New York established beyond a reasonable doubt the guilty participation, group and combination participation of these defendants in the killing of the victim named in the indictment?

A. Yes.

Q. That will be your job if accepted as a juror. Will you, sir, if accepted as a juror, conscientiously endeavor to do justice by your finding, by your verdict?

A. Yes.

Q. After you hear all the evidence in the case and you discuss the case with the other jurors, if your mind is satisfied beyond a reasonable doubt that Capone, Buchalter, and Weiss are three of the killers of Joseph Rosen, as we charge in this indictment, and you are satisfied of that beyond a reasonable doubt, will you say it in your verdict?

A. Yes.

Q. And without fear and without hesitation?

A. Yes.

Q. Mr. Harris, would you have any bias or prejudice against the use by a prosecutor of accomplice testimony?

[fol. 2272] A. No, I would not.

Q. Will you take all the rules and tests the Judge gives you, and the common-sense rules that you apply to weighing the believability?

A. Yes.

Q. Will you apply it to that type of witness and find out does he speak the truth about the group or combination that participated in the murder of the victim named in the indictment?

A. I would.

Q. And will you devote all your faculties to the determination of whether guilt has been established beyond a reasonable doubt, of these three men, or whether they are innocent of the charge? Will you do that?

A. Yes.

Q. Will you, sir, by your verdict, endeavor to do justice in the case?

A. I would, yes.

Q. I believe you said that you know neither the District Attorney nor any member of his staff by way of Assistant District Attorneys.

A. I do not.

Q. That you know none of the defense lawyers in the case?

A. I have seen them in court here.

Q. With respect to the fact that there is only one charge here which the defendants meet and only one charge which the prosecutor has to establish, namely, this indictment, do you feel the same as Mr. Butt does?

A. Yes.

Q. And do you feel the same as he does in regard to all the responses, substantially; do you feel you would have [fol. 2273] answered the same as he did if I put the questions to you?

A. Yes.

Q. If I establish to your satisfaction beyond a reasonable doubt that Capone, Weiss, and Buchalter, are three of the killers of Joseph Rosen, will you say that in your verdict?

A. I would.

Q. Without fear and without hesitation?

A. Right.

The Court: We are going to take a recess for fifteen minutes. Everybody be seated. First the jury will go out. Do not discuss the case, gentlemen, and do not mingle in the corridor.

Defendants remanded.

(A short recess was then taken.)

[fol. 2274] Trial Resumed—(5:15 P. M.)

The Court: A situation has arisen which requires that the Court exclude all members of the panel. While absent from the court-room, do not discuss the case. You may retire with the officer.

(The jury and talesmen then left the room.)

The Court: I will have to ask that all other members of the panel step outside. All members of the panel are excluded.

Now that nobody is here except the defendants and counsel and the officials of the court staff, the Marshal will kindly take the stand and be sworn.

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ARTHUR G. JAEGER, residing at 3545 Eighty-ninth Street, Jackson Heights, Borough of Queens, City and State of New York, was duly sworn.

By the Court:

Q. Captain Gannon, the chief court attendant of this court, has made a report to the Court concerning which the Court desires to make a record. He states that you have informed him that you are under instructions from Washington not to let the prisoners be in court after four o'clock any day. Is that true?

A. Well, it is not true. I informed Captain Gannon—I informed Mr. Turkus. I received a phone call Saturday [fol. 2275] morning at five minutes past nine. I was not there. I was told to phone back. That is the message that was left. I phoned back as soon as I got in the office. That I did at ten minutes past ten. I had a conversation with Mr. Bennet for about half an hour with reference to this case.

Q. State the full name and official position.

A. James Bennet, Director of Prisons, Department of Justice, Washington, D. C.

Q. What was the phone call? Was it the voice of the Director of Prisons, who claimed he was Mr. Bennet?

A. Right. It was with reference to the manner in this court. He did not like the idea that prisoners were transported in the dark, and he told me that at four o'clock I

could come in here and take the prisoners out, which I should do if it would be dark by the time I get them over to the House of Detention.

Q. Did you tell him that the prisoners had been taken, without handcuffs, to a public restaurant after dark?

A. I did not tell him that, no, sir; he knew that.

Q. So the instructions are you are to walk into the court and break up the trial by taking out the prisoners?

A. If I saw fit.

Q. You are the super-judge?

A. That I don't know.

Q. Do you know Mr. Bennet?

A. I never saw him.

Q. Do you know his voice?

A. Well, I have spoken with him on many occasions.

[fel. 2276] Q. Very often?

A. Yes, sir.

Q. You never met him?

A. No, sir, I have not.

Q. Have you any written instructions?

A. I had when these negotiations were being made.

Q. Have you any written instructions on what you have just testified to?

A. No, sir.

Q. That the Judge is to be a rubber stamp and you are to walk in here and take prisoners out?

A. No, sir, I have not. The only thing he told me was that I was responsible for these prisoners while they were up here in New York.

Q. Except when they are dining in Joe's Restaurant?

A. Except when they are in the House of Detention.

The Court: That is your responsibility, and I have mine. Mr. Cannon also reported that tomorrow morning the prisoners could not be here, according to you, because at 10:30 o'clock they were to be arraigned in the Federal Court.

The Witness: That is only one.

Q. Which defendant.

A. Emanuel Weiss.

Q. Who gave you instructions?

A. Mr. Scilleppi, of the United States Attorney's office.

Q. Did you tell him they were on trial before this Court?

A. Yes, sir.

Q. What did he say?

A. He said it would be necessary for them to be here before Judge Campbell at 10:30.

[fol. 2277] Q. Mr. Scileppi is a well-known lawyer, and he has practiced successfully in this court, and he is a gentleman; that does not sound like Mr. Schileppi. Your instructions, sir, are that while the trial is on the authority of this Court as to details of the trial and as to hours, is supreme. If that is in conflict with the authority of yours while these defendants are on trial, you will be guided accordingly, or you will simply have to take what is coming to you. You will so report to your superior.

Mr. Turkus: May I address the Court at the bench?

The Court: No. If the Department of Justice wants to break up this trial, there will have to be something more than a telephone message to somebody whom he has never met. There will be an official order, and the responsibility will be placed, and the public will know where that responsibility is and be entitled to know the reason why.

Bring back the jury.

(The jury and talesmen then entered the court-room.)

By Mr. Barshay:

Q. Mr. Butt, do you know a person named Harry Butt, a projectile expert in the Police Department?

A. No, sir.

Q. Now, have you read about this case at all?

A. No, sir.

Q. You never saw it mentioned in any newspaper at all?

A. No, sir.

Q. Have you read about the defendants in any newspaper?

[fol. 2278] A. Not recently.

Q. At any time?

A. Some time ago.

Q. Did you read extensively about it?

A. No, sir.

Q. More than one article?

A. No, sir.

Q. By virtue of what you read did you form an opinion with respect to that one?

A. No, sir.

Q. Or did you form an idea or impression with reference to him?

A. No, sir.

Q. Did you ever hear the name discussed?

A. No, sir.

Q. Or the names of the other defendants?

A. No, sir.

Q. Did you form an impression with respect to this case? Or to the defendants, while you were listening to the other jurors being chosen?

A. No, sir.

Q. Have you had prior service?

A. No, sir.

Q. In any case at all?

A. No, sir, I have been called.

Q. You never have been called?

A. I have been called, but I have not served.

Q. May I know if you were called more than once?

A. Just once.

Q. Were you examined?

A. I was examined.

Q. Was it a capital case?

A. Yes, sir.

Q. Did any of the participants in this trial participate in that case?

A. Not as I know of.

Q. Any impression you gained in that case, when you were questioned, which would result to the detriment of any of the defendants in this case?

[fol. 2279] A. No, sir.

Q. In reference to Buchalter, or the name of Lepke, does that fact weigh against him?

A. No, sir.

Q. Is there any question that I put to any juror here, or any answer any juror made which would in any wise influence you in this case?

A. No, sir.

Q. I take it that you find fault with neither side for trying to get jurors who will be fair and impartial and just?

A. Yes, sir.

Q. Sometimes when we have an argument, that is by-play, and has nothing to do with the case, you understand?

A. Yes, sir.

Q. Now, Mr. Wegman, Mr. Climenko, and myself represent Mr. Buchalter, just us three, nine do not represent him, so that now you tell me there is nothing that you know of or that you have heard that will preclude you from rendering an impartial verdict here, am I correct?

A. Yes, sir.

Q. And especially the fact if it shall be developed that Mr. Buchalter is now serving a sentence of forty-four to seventy years?

A. No, sir.

Q. If the Court shall tell you that character is no part of this case, unless the defendants should offer good character in evidence, I take it you will follow that instruction?

A. Yes, sir.

Q. Does the fact that a person has been killed prejudice you against anyone?

A. No, sir.

[fol. 2280] Q. You gave that considerable thought, which you have a right to do, but your answer is positively no?

A. Yes, sir.

Q. You understand it is merely an accusation, that is all?

A. Yes, sir.

Q. It has no force whatever, no probative force whatever?

A. Yes, sir.

Q. And when the defendant interposed a plea of not guilty, as he did in this case, it became a question for you to decide, whether or not the District Attorney proves guilt beyond a reasonable doubt?

A. Yes, sir.

Q. Now, there must be nobody here to prove his innocence— you understand that?

A. Yes, sir.

Q. When Mr. Turkus said that we must try the issue of guilt or innocence, I think I have an idea—I know what he meant—he meant the right thing, but let us see whether or not we understand each other. We need not prove ourselves innocent; our guilt you must decide; the law presumes we are innocent. When I say "We", I speak of the defendants. You must decide whether or not the District Attorney has sustained the burden of proof beyond a reasonable doubt. That is the only issue, not one of guilt or

innocence, but is he guilty beyond a reasonable doubt, to your satisfaction?

A. Yes, sir.

Q. That obligation you are willing to undertake?

A. Yes, sir.

Q. Keeping in mind that throughout the trial the pre-
[fol. 2281] sumption of innocence surrounds him until the District Attorney has sustained the burden?

A. Yes, sir.

Q. At no time shall you require the defendant to prove, either through himself or through witnesses, his own innocence?

A. Yes, sir.

Q. In other words, the burden shall never shift to the defendant?

A. Yes, sir.

Q. And at the conclusion of the case when the Court charges you that the failure of the defendant to take the stand shall draw no unfavorable inference against him in your mind, you will follow that instruction?

A. Yes, sir.

Q. The presumption of innocence you will consider as part of the evidence in favor of the defendant?

A. Yes, sir.

Q. There was propounded to the jurors a question as to whether or not you find fault with Judge O'Dwyer for accepting the testimony of an accomplice. Now, nobody finds fault with him for doing that—that is his job. The point is, do you, under the light of cross-examination, under the light of all the evidence, will you accept the testimony of the accomplice? That is the issue, isn't it?

A. Yes, sir, as I understand it; I don't know so much about it.

Q. It is not what any other person accepts, it is you; that is an obligation you must assume. Are you willing to do that?

A. Yes, sir.

Q. It is a simple one. Are you willing to do it?
[fol. 2282] A. Yes, sir.

Q. Free of any sympathy, free of any prejudice, free of any bias, free of consideration as to who prosecutes this case or who defends it?

A. Yes, sir.

Q. You will weigh any witness's reputation or character or anything at all, and with respect to Judge O'Dwyer, I take it he is not going to be a witness—I don't know.

A. Yes, sir.

Q. You also understand that none of the lawyers are witnesses in this case at all?

A. Yes, sir.

Q. The District Attorney presents his side, and the wisdom of counsel will decide whether or not they will present their side?

A. Yes, sir.

Q. From all indications—I don't say this of personal knowledge—the proof shall come forth from a person who claims to be an accomplice. Do you understand why I use the words "who claims to be an accomplice"?

A. Yes, sir.

Q. A plea of Not Guilty on Mr. Buchalter's part puts the District Attorney to that proof, whether or not he is an accomplice of Buchalter's. He may claim it, but the proof may be otherwise—that will be up to you.

A. Yes, sir.

Q. He may come here or they may come here and say that they participated in the commission of a crime—that makes him a principal—and it is for you to say whether he was or not.

A. Yes, sir.

Q. And in deciding whether or not he was an accomplice [fol. 2283] of Buchalter, will you take into consideration the fact that some place else, in another court, under oath, he said that he did not know anything at all about this case, in judging whether or not he is telling the truth here?

A. Yes, sir.

Q. That is part of the test you will give to the person who applies for credit from you?

A. Yes, sir.

Q. Will you also take into consideration when he says, "I am an accomplice of Buchalter," the further fact, if it is true—don't take my word for it now, until it comes from the witness stand—if it is true that he ever spoke or had seen Buchalter in all his life? You will take that into consideration?

A. Yes, sir.

Q. In other words, the mere fact he comes here and says, "I declare myself to be an accomplice of Buchalter," you

will accept only when you put his testimony to a search light and consider it carefully?

A. Yes, sir.

Q. Now, there will be the testimony of those who will come here for the purpose of giving other evidence which tends to connect the defendant Buchalter with the commission of this crime. If you find it comes from people who had, out of their own mouths, admitted to you under oath that they have committed not one, but eleven murders, and have gone unpunished, and one has committed six murders and gone unpunished, that they have lived lives of crime, which includes every conceivable crime from A to Z—will [fol. 2284] you weight their testimony with a great deal of care before you accept it?

A. Yes, sir.

Q. In other words, just as much as Judge Taylor shall be the judge of the law, you shall be the judge of the truth or falsity of the facts?

A. Yes, sir.

Q. You shall be a searcher for the truth, is that right?

A. Yes, sir.

Q. We ask no favor when we say to you at the end of the entire case, "If you find from the evidence a reason for doubt as to the guilt of the defendant or the defendants, you must give it to that defendant or defendants."

A. Yes, sir.

Q. And no matter how much they believe that they did it or participated in it, no matter how much you shall suspect, you will use the test initiated by the Judge, that is, from the evidence beyond a reasonable doubt, as to the guilt of the defendants?

Mr. Turkus: I object to that question.

The Court: If the Court charges you that the defendant must be acquitted unless proved guilty beyond a reasonable doubt, will you follow that instruction?

The Witness: Yes, sir.

Q. Evidence may come forth from people, which is binding only on a particular defendant. I say that to you knowing that you already hear/ often enough that some of it will bind one defendant.

A. Yes, sir.

Q. And will bind two or sometimes three, I don't know, [fol. 2285] but do I take it that you will consider the evi-

dence offered against one person as binding only against him, unless and until his Honor shall charge you that you may?

A. Yes, sir.

Q. I take it that you also understand by this time that, while the trial is of the three together, each one here really is being tried separately, and you must give a verdict with respect to each one based upon the evidence in this case, and not as a group?

A. Yes, sir.

Q. To sum it all up, can the defendant entrust to you the preservation of every legal right given him by the law?

A. Yes, sir.

Q. And will you do that?

A. Yes, sir.

By Mr. Barshay:

Q. Mr. Harris, have you read about this case?

A. Some time ago I did, casually.

By the Court:

Q. Do you know Frederick Harris at Warren and Greenwich Streets?

A. No, sir, I do not.

Q. You look something like him, but he would be old enough to be your father.

A. No, sir, I do not know him.

By Mr. Barshay:

Q. Did you read the *Mirror* by any chance?

A. No, sir.

Q. Did you read any other paper?

A. I read it in the morning.

Q. May I know what you read?

A. The *World-Telegram* and the *Brooklyn Eagle*.

[fol. 2286] Q. In those papers did you read anything at all about the facts in this case or the defendants generally?

A. You mean the case at the present time?

Q. Yes.

A. No, sir.

Q. Or the defendants generally?

A. No, sir.

Q. The casual reading that you had, did that leave with you an impression or an opinion with respect to the defendants?

A. No, sir, it did not.

Q. Or any idea or thought?

A. No, sir.

Q. Did anything you heard, or is there anything in your mind at all which results in bias against the defendants?

A. No, sir, I don't think so—there is no doubt about it.

Q. Have you had prior service?

A. Yes, sir.

Q. In a capital case?

A. Yes, sir.

Q. May I know how long ago?

A. I think the last time was in December.

Q. May I know the name of the Judge?

A. Judge Fitzgerald.

Q. Were any of the lawyers involved in this case?

A. It would be hard for me to say because I recall quite a few faces around here from having been in court before. I think Mr. Barshay and Mr. Turkus. Just what case or how they were connected, I could not say.

Q. I take it you have never seen me as a defense counsel?

A. No, sir.

Q. You are not mistaking me for Mr. Klein?

A. No, sir.

[fol. 2287] Q. Is there any opinion you formed, because of your jury service here, or being present here, which can be construed by you to be detrimental to the defendants?

A. No, sir.

Q. Before Judge Fitzgerald—were you called as a juror?

A. Yes, sir.

Q. Many times?

A. Yes, sir.

Q. May I know how many?

A. I served about one and a half years before that one in December, and then possibly eight or nine months prior to that.

Q. Have you ever been a grand juror?

A. No, sir.

Q. Or a Federal juror?

A. No, sir.

Q. Have you been the victim of any crime?

A. No, sir.

Q. The defendant's name is Louis Buchalter. He has been referred to as Lepke. That has nothing to do with the case?

A. Nothing whatever.

Q. The number of counsel present at the tables has nothing to do with the case?

A. No, sir.

Q. Are you going to take any action in this coming election?

A. I don't think I will. I might say that Mr. Murphy, a candidate, is a friend of mine.

Q. Have you ever discussed this case with Mr. Murphy?

A. No, sir.

Q. By any chance—as to prospective jury service?

A. I only got it at half past eight.

Q. In any event, you will weigh the evidence here and [fol. 2288] nothing at all with reference to Judge O'Dwyer?

A. Yes, sir.

Q. Can Buchalter entrust his legal rights to your consideration?

A. Yes, sir, why not?

Mr. Talley: I think I can ask a few questions collectively.

By Mr. Talley:

Q. You understand that the burden of proving the guilt of these defendants is always upon the District Attorney, representing The People?

A. Yes, sir.

Q. And the Court will charge you that that burden never shifts at any time during the progress of this case from the shoulders of The People to the defendants.

A. Yes, sir.

Q. The Court will further charge you that it is no obligation under our law for a defendant to take the stand in his own behalf.

A. Yes, sir.

Q. My question to both of you is this: If in the judgment of course, or otherwise in this case the defendants do not take the stand, or any of them do not take the stand, will you attach any unfavorable inference against them solely because of the fact they do not take the stand?

A. No, sir.

Q. You are quite sure of that, because it is a common right that our law gives to a defendant?

A. Yes, sir.

Q. And I want to be sure that that principle of law is in your mind. Can I rely upon that?

A. Yes, sir.

Q. Neither from reading nor conversation nor from any [fol. 2289] other source, have you any impression as to any of these defendants?

A. No, sir.

Q. Any interest you may have as a result of your acquaintance with my friend Charles Murphy, who is interested in the election of Mr. O'Dwyer, that will not have any influence upon you in determining this case? It is an important case to the District Attorney, particularly at the present time. You would not be influenced?

A. The only reason I brought that out was that I heard Judge O'Dwyer's name mentioned so many times I did not know just what it was all about.

Q. That is all right. We do not want any juror in this jury box who is going to be influenced in his determination of the guilt or innocence of these defendants by the fact that the District Attorney who has presented this indictment is a candidate for Mayor; that is the important thing. I understand from you that you are not in the slightest degree influenced by that consideration.

A. Right.

By Mr. Rosenthal:

Q. You said in answer to questioning that you read about one defendant—I don't know how long ago you read about him; can you remember?

A. I cannot remember.

Q. Was it an isolated item you read, or a continuous series, and have you any impression at all of the contents or over what period of time you read it?

A. No, I have not.

Q. Was there anything which you read, irrespective of [fol. 2290] the hazy idea you have, that has in any wise formed an impression in the back of your mind?

A. No, sir.

Q. Do you realize that the defendants are not being tried on newspaper reading?

A. Yes, sir.

Q. And that when a defendant, whether it be this defendant or any other defendant, is indicted by the Grand Jury, by the presentation of evidence to them in secret, that that is merely an accusation against the defendant?

A. Yes, sir.

Q. You understand further that the moment a defendant, upon being arraigned upon that indictment, walks into court and says, "Not guilty," that he then raises all the issues which are presented in that indictment and which must be substantiated by evidence of a nature which will establish that defendant's guilt beyond a reasonable doubt?

A. Yes.

Q. You do not find any fault with that principle of law?

A. No, sir.

Q. So I may take it, then, that the mere fact that the defendant has been indicted, as these defendants have been, raises no presumption in your mind as to the guilt of that particular defendant?

A. No, sir.

Q. And, to use an expression which has been used during the selection of this jury, as far as these defendants are concerned, they start off at scratch: is that right?

A. Yes, sir.

Q. Now, then, I don't know whether you have been asked if you know either Mr. Turkus or Mr. Klein or Mr. Joseph, [fol. 2291] who are active participants on behalf of the District Attorney, do you know any one of them?

A. No, sir.

Q. You have already answered—I might switch just a moment from Mr. Butt to Mr. Harris—was Mr. Turkus the prosecutor in the case that you sat on in December of 1940?

A. No, sir.

Q. You saw him there on the side of the defense, he then represented a defendant in a criminal case, and now you see him on this side. You saw Mr. Barshay when he was on the other side of the defense and now he is on this side.

A. Yes, sir.

Q. Well, you realize, and I do not say it facetiously, that every lawyer is sworn to protect his client?

A. Yes, sir.

Q. The indictment, under the law, does not enter into consideration in your determination of the guilt or innocence of any client?

A. Yes, sir.

Q. Whether it be The People of the State of New York, of which you are a part, and I am a part, and the defendant is a part—

A. Yes, sir.

Q. And only because of the fact of what has been brought out, you understand, and it must be clear to you, that Judge O'Dwyer is not on trial in this court at this time, nor is he—

Mr. Turkus: I object to the use of such words.

Mr. Rosenthal: I will withdraw the question and put it this way to the juror:

[fol. 2292] Q. We are not trying the issue of Judge O'Dwyer against the defendant, so that the entity of Judge O'Dwyer enters into this case?

A. No, sir.

Q. I think you understood me—you are to determine this case from what you hear from sworn witnesses, and not from what you think of Judge O'Dwyer and whether you think he would make a good Mayor or a better District Attorney, or what you think of lawyers who are representing the defendant?

A. Yes, sir.

Q. That is the way you will take this case in the event you are accepted as a juror?

A. Yes, sir.

Q. Now then, Mr. Butt, you said you served once, was it, on a special panel; do you recall?

A. Yes, sir.

Q. About how long ago?

A. Probably about a year ago.

Q. Was it while Judge O'Dwyer was District Attorney or prior?

A. I don't know.

Q. Can you recall what judge it was?

A. Judge Fitzgerald.

Q. Was that around December of 1940?

A. I think so.

Q. The reason I am asking you that is because Mr. Harris said he served in December of 1940.

A. I don't recall.

Q. You both met at that time, did you?

A. No, sir.

Q. Now, there is nothing that happened at that time which would in any wise influence or prejudice you one way or the other?

A. No, sir.

Q. Now, I want to get straight in my mind—when Mr. [fol. 2293] Barshay asked you regarding whether or not the fact that a person has been killed, as unquestionably the proof will be in this case, that Rosen was killed, by a gunshot wound—whether that would prejudice you. You hesitate a little before you answer. Is there anything in your mind that, by reason of your hesitation, makes you doubtful as to whether you are prejudiced? Of course, we are all prejudiced against killings—the idea is if the question did not imply prejudice against killings, and if there should be a prejudice against the defendants, we are entitled to know it. Of course, nobody will contend in this case, not even defense counsel, that Rosen was not killed or that he was not killed by a gunshot wound, or more than one, but I want to know whether, in hesitating about prejudice, whether there was a thought in your mind that you were prejudiced against anybody that was killed.

A. No, sir—it was the prejudice against killing.

Q. But that natural prejudice, which we all must have, in no wise affects your ability to fairly determine whether the defendant was in any wise connected with it?

A. No, sir.

Q. Have you any relatives on the police force?

A. No, sir.

Q. Or any close friends who are officials of the Police Department?

A. No, sir.

Q. The names of people were mentioned over and over again, but I will mention them now in view of the fact that [fol. 2294] during this long questioning of jurors some were not present, so they are unfamiliar at this time with some of the names. Do you know Captain Bals of the Police Department, Frank Bals?

A. No.

Q. Or Lieutenant Osnato?

A. No, sir.

Q. Or a detective named Meehan, or McDonough, or Carson or Swift?

A. No, sir.

Q. Other men who have preceded you in the jury box have been asked by Mr. Turkus also as to whether they heard the names of Harry (Pittsburgh Phil) Strauss and Martin (Bugsy) Goldstein, and a number of others. Have you heard of those names?

A. In the newspapers.

Q. Other than reading in the newspapers, have you ever discussed those persons with anybody at any time?

A. No, sir.

Q. The District Attorney has indicated in his prior questioning of jurors that, in attempting to prove the guilt of these defendants, he will rely upon what he calls an accomplice or accomplices as part of his case. Is that clear to you?

A. Yes, sir.

Q. The case you sat on, Mr. Harris, has there ever been any instructions on the law to you by the Court on the question of accomplice testimony; in other words, have there ever been so-called accomplices who testified, and you had the benefit of the Court's instructions as to the law?

A. I don't believe so.

[fol. 2295] Q. You understand, Mr. Butt, having never served on a jury before, I use the word "sole" with you as one of the twelve men who are the sole judges of all of the facts in this case; that is your job.

A. Yes, sir.

Q. You understand that no matter what I say or what other counsel may say, which includes the District Attorney, and it also includes the Judge, as to the facts in this case, they can only be accepted by you as facts if that interpretation agrees with your interpretation of what the witnesses said on the stand. You are not bound to accept anything as a fact from anybody in this court-room other than what you believe concerning the testimony.

A. Yes, sir.

Q. On the other side, irrespective of what your opinion on the law may be, there a Judge is supreme—you may like or dislike a law, like in former times a great many people disliked prohibition—but whether you like it or dislike it, when you are sworn as a juror you must accept what the Judge tells you is the law in applying it to the facts in the case?

A. Yes, sir.

Q. You find no fault with that?

A. No, sir.

Q. Now, in the event that the Court were to charge you as the law in this case as well as in any case, because if it is charged as the law in this case it means it is the law of our State in every case, it is an exception—if the Court were to charge you that our law is that whether one accomplice [fol. 2296] or one hundred or one thousand, and so on ad infinitum, were to testify in the case, that the weight of all this accomplice testimony is no greater than the weight of one—in other words, one cannot corroborate the other—you would find no fault with that instruction on the law?

A. No, sir.

Q. And you would follow it implicitly?

A. Yes, sir.

Q. The time may come when the Court may not be able to say to you, as a juror, that "This man is an accomplice as a matter of law." I want to make myself clear, when I say it quite loudly, so that possibly the greater part of the men in the room may hear it, so I will not have to repeat it. The Court may say to you in this case, "Gentlemen of the jury, I charge you that Mr. So-and-so, who is a witness for The People, is an accomplice as a matter of law." Is that clear?

A. Yes, sir.

Q. Now, in that event it will then become your absolute duty to accept that law, and when you go into the jury room, in discussing the evidence of that particular individual, start off with the knowledge that in accordance with our law no person can be convicted on his testimony, even if it were believed, unless there was other believable evidence tending to connect the defendant with the crime. Do I make myself clear?

A. Yes, sir.

Q. Now then, a situation may arise—we have no way of ascertaining it at this time—where a dispute may arise from [fol. 2297] the testimony of some individual who is called to testify. In that event the Judge may say to you, not as an individual, but collectively, as a jury: "I charge you that you may find from the facts that so-and-so is an accomplice."

Do you understand the difference? Do I make myself clear? If I do not, I will try to explain. In one instance

the Judge says to you, "This man I charge you as a matter of law is an accomplice." There you have no alternative but to accept that as final and conclusive and start off with the knowledge that, as a jurymen, you must find other evidence of a believable nature tending to connect the defendant with the crime.

A. Yes, sir.

Q. In the other instance, where there is a dispute, the man himself may on the stand deny he is an accomplice, but you may from his every action and what he testifies he did or what part he played, determine as a question of fact that he actually was an accomplice.

A. Yes, sir.

Q. Now then, merely because of the fact that the Judge does not charge you that he is one, as a matter of law—assuming in all instances what I say to you is the law, as will be charged by the Court—will not preclude you as a question of fact from determining a man is an accomplice if you determine that he is?

A. Yes, sir.

Q. Do you understand that if, then, you determine a man is an accomplice as a fact in your jury room, then the test, [fol. 2298] the same test, is applied to his testimony as would be applied to the testimony of an accomplice whom the Judge charged you was an accomplice as a matter of law?

A. Yes, sir.

Q. Now, the District Attorney has explained, as has Mr. Barshay, that no man can be convicted on the uncorroborated testimony of an accomplice, even though that testimony was believed.

A. Yes, sir.

Q. You may say to yourself, "Now, how can we convict in the event there were other testimony?" Your job, then, is to find whether there is other believable testimony tending to connect the particular defendant with the crime. Is that clear?

Mr. Turkus: I object.

The Court: Objection overruled.

Q. Now then, if the Court were to instruct you that where a man is an accomplice, whether he be an accomplice as a matter of law, charged to be so by the Court to you, or

whether you find him an accomplice as a question of fact, that that man's testimony must be viewed with you by caution and suspicion, will you do that?

A. Yes.

Q. Now, the District Attorney may rely—and there again we are in the dark at this time—upon alleged other testimony, possibly so-called admissions, which means that the defendant possibly is accused of having said to one of his witnesses, “I, the defendant, did commit this crime.” [fol. 2299] A. Yes, sir.

Q. And say to you, “That is the evidence we rely upon as being evidence that connects this defendant.” Now, if such happens to be the case, and even if such does not happen to be the case—and this applies to all testimony that may be offered—in the event you find that this testimony comes from individuals who were individuals of unsavory character, who had committed a number of murders, admittedly—whether the accomplice says that under examination by the District Attorney or under cross-examination by counsel—for some of which he never will be punished because he has immunity; has committed numerous other crimes, including perjury, having sworn under oath in a court similar to this before a jury falsely, committed perjury, will you, together with all the other things that you may use as a test of whether or not the man is telling the truth, utilize these things in determining what, if any, motive that particular individual may have in testifying falsely concerning the defendant I represent?

A. Yes, sir.

Q. You can understand that a man may tell the truth about himself and lie about someone else?

A. Yes, sir.

Q. You can understand that a man may receive treatment of a character which he was not used to, such as being kept in a hotel with other witnesses for the prosecution, in a place where they can consort together, go out and play [fol. 2300] baseball with detectives, take walks along the boardwalk at Long Beach and other places and be allowed to see their wives and be with them and other things of that character—

Mr. Turkus: I object to the summation. The case will be tried after the jury is sworn.

By the Court:

Q. Gentlemen, will you take into consideration any and every inducement that may enter into the head of a person that gives testimony, in weighing its value?

A. Yes, sir.

Q. Including special treatment, for whatever that is worth?

A. Yes, sir.

By Mr. Rosenthal:

Q. You will listen, if accepted, to the testimony of these people who are called to testify for The People?

A. Yes, sir.

Q. And, as Mr. Turkus said, you will listen to the cross-examination, and if you are called as a jurymen you will learn then what "special treatment" the Judge has inferred or I have inferred in my question, and whether or not it has any effect on the testimony that is given concerning these defendants. That is fair enough?

A. Yes, sir.

Q. I take it you never sat on a Grand Jury.

A. No, sir.

Q. Do you understand that these defendants are being charged with a particular crime on which the defendant Capone is represented by me? I am prepared to meet the issue which is to be raised, namely, whether or not he participated in this crime. They are not being tried by newspaper publicity or anything of that kind, nor is any campaign issue or anything of that kind connected with it. Do you feel you can give them a fair determination at your hands on the issue and on the issue alone, if you are accepted?

A. Yes, sir.

Q. Now, never having sat on a jury before, do you understand that your duty is, wherever it is physically possible, to sit in harmony and accord with the other eleven jurors?

A. Yes, sir.

Q. Do you understand further that that does not mean that you are to subordinate your opinion to that of any other person?

A. Yes, sir.

Q. Assuming you were to work in harmony with the other men, having formed an opinion which is based on your

own conscience as to what you believe the evidence to be, but that the opinion you formed is not in harmony with a great many of the others, you understand your duty would be then to openly discuss the foundation of the opinion you formed?

A. Yes, sir.

Q. And to politely listen to what they say is the reason for their opinions?

A. Yes, sir.

Q. You will do so if you are accepted?

A. Yes, sir.

Q. If, after listening to the reasoning, you are not convinced that their logic is as good as yours—in fact, you seem to think your logic is better, would you, simply because of the fact you never sat on a jury before, and somebody [fol. 2302] else may have, or because of the lateness of the hour, business pressure, or anything else, subordinate your opinion to your friends', or would you retain your opinion as long as it remained your opinion based upon your conscience?

A. I would.

Q. If you were convinced, after listening to reasoning, and your conviction was not changed, you would retain your opinion irrespective of the opinion of others?

A. Yes, sir.

Q. You would not be afraid of being charged with being arbitrary or anything else, if you had an opinion formed on your conscience?

A. No, sir.

Q. Because, and there is no hesitation about this fact, this case—simply because of the fact there has been publicity in this case—would you feel afraid to come in with a verdict of "Not Guilty" in the event you are not convinced according to the rules of law laid down by the Court that these men are guilty?

A. No, sir.

Q. Now, counsel for one of the defendants said that as to him, his client, he may or may not take the stand. It may develop, as far as the defendant represented by myself is concerned, that defendant will take the stand, in the wisdom of his lawyer. You are not of the opinion that, when a man takes the stand, because he has been accused of a crime, that he necessarily is lying?

A. No, sir.

Q. Because he is a defendant in the case?

A. No, sir.

Q. Of course you will, in determining what value you will [fol. 2303] give to his testimony, take into consideration, like you would the accomplice, the fact that he has an interest. Certainly he has. He is here resisting a charge against him. But if you once determine that, irrespective of the interest, he was telling you the truth, would you hesitate to give the same value to the truth from him as you would from any other source?

A. No, sir.

Q. It may further develop that not only will the defense take the stand, but witnesses will take the stand on his behalf. It has been discussed before you were summoned as a jurymen, the question of alibi. I suppose you are familiar with the term? There is nothing mysterious about the word "alibi". In law it means that people will take the stand to prove that this particular defendant was elsewhere at the time it is alleged in the indictment this crime was committed. Now, if the Court were to charge you that the burden of proof never shifts from that side of the case over to this, you will accept that as the law?

A. Yes, sir.

Q. Merely because of the fact that the defendant does go forward—and let me interrupt myself—under our law you understand the defendant need never offer any proof, need never take the stand, need never bring a witness, need never do anything, he can stand mute, and still it would be your duty to compel the prosecutor to establish him guilty beyond a reasonable doubt, to your satisfaction before you could [fol. 2304] convict. Now, merely because of the fact that, in the wisdom of his attorney this defendant whom I represent may offer proof, would that, knowing now that the principles of law do not compel any evidence to be offered to negative the charge, would the mere fact that he offered proof be any different conception of the law and make you change what the Court has told you is the law?

A. No, sir.

Q. If the Court were to charge you that if the evidence of an alibi offered by a defendant in any criminal case is sufficient in your mind to create a doubt as to whether the defendant committed the crime, where, if no alibi was offered, any doubt would not exist, would you accept that as the law?

A. Yes, sir.

Q. And if the evidence of the alibi were to establish in your mind a reasonable doubt as to whether my client Capone had anything to do with this particular thing, would you resolve that doubt in his favor if you were instructed by the Court that all reasonable doubt must be resolved in favor of the defendants? Would you give him the benefit?

A. Yes, sir.

Q. And if you were further instructed that where there is evidence which is open to two different conceptions—in other words, where the evidence may on the one hand point toward guilt and on the other hand toward innocence, where the evidence is open to those two conceptions, it is your absolute, bounden duty, disregarding the conception of [fol. 2305] guilt, to take the one of innocence, would you accept that as the law?

A. Yes, sir.

Q. Irrespective of the fact that these three men are being tried together, you understand that each one of these men in reality is being tried separately?

A. Yes, sir.

Q. It is a matter of convenience that they are being tried together?

A. Yes, sir.

Q. And that where the evidence applies to one particular individual, in accordance with the charge laid down by the Court as the law, that it can only be used against that individual, and that you may have in this case nine separate types of verdict, from guilty down to innocence as to all, and guilty as to one, two or three, and that each one is entitled to a separate deliberation at your hands if you are accepted as a juror?

A. Yes, sir.

Q. And you will do that?

A. Yes, sir.

Q. Another thing: Questions of law may arise—and I am being a little more loquacious with you—where, at the conclusion of The People's case the Court may say, "I deny the motion to dismiss the complaint," or, at the conclusion of the defendants' case; you understand that those denials, if you are instructed by the Court, have no force or weight as far as you are concerned, and are merely questions of law, and that no unfavorable inference can be drawn by you because of these denials?

A. Yes, sir.

[fol. 2306] Q. Now just a couple of other things so that we may make clear to you about an accomplice, so-called. Mr. Turkus asked one of the men whether he had objection to the District Attorney solving a case, and he has used the name of this person—he has used the name of Judge O'Dwyer when he asked the question—that he solved the case from the inside, and used accomplice testimony. You heard that?

A. Yes, sir.

Q. I know he does not mean to infer that question as directed to a particular person now serving the people of Brooklyn. He asked that as a general question. You understand that?

A. Yes, sir.

Q. Now, do you realize that a man, a so-called accomplice, as he says, who is aiding in the so-called solution, as he says, may absolutely be telling the truth about his having shot and killed somebody and be telling an absolute falsehood as to his connection with others?

A. Yes, sir.

Q. You understand further the test in this case is not whether you believe the accomplice is telling the truth about himself, but whether the accomplice is telling the truth about the defendant, and there is other evidence tending to connect the defendant with the crime?

A. Yes, sir.

Q. Do you further understand that this so-called independent evidence—I withdraw that.

If the Court were to instruct you that the so-called independent evidence, outside of the accomplice testimony, is no [fol. 2307] proof that there was a crime—in other words, to make it clear, an accomplice goes on and says, "I shot him with a .38 calibre gun and I left him on such-and-such a street in an automobile"—or out of an automobile or any way it was, and then a policemen should come in and say, "I found the body of a man at the place where the accomplice said he was," and the Medical Examiner comes in and says he was dead, was shot and laying on the floor, that may show you, you understand, what the accomplice is saying about himself; is that clear?

A. Yes, sir.

Q. But if the Court should instruct you that that in no wise shows you that any one of these defendants partici-

pated in the crime, you would follow that instruction without hesitation?

A. Yes, sir.

Q. Is there any reason, after this long questioning by four separate counsel, that you know of that you cannot sit as a fair and impartial jurymen? We have no way of reading your mind. I know there is one reason why you would like to get off. You are a delegate to a convention, I remember that, but I am not implying that is a reason, as good a reason as it may be, I mean outside of that reason—I am forestalling your answer—outside of that reason is there any reason you cannot serve?

A. No.

Q. Mr. Harris, you have had prior jury experience?

A. Yes, sir.

[fol. 2308] Q. And you have heard evidence in court before?

A. Yes, sir.

Q. Now, you said you are a close personal friend of Mr. Murphy, who is Judge O'Dwyer's manager.

A. He is on the board of directors of an association of which I am president.

Q. Is this association actively engaged in the campaign?

A. No, sir, not at all.

Q. There seems to be some doubt in your answer to the question by Mr. Barshay as to whether or not you intended to be active politically in the forthcoming campaign. I don't know whether I misunderstood your answer, but you did answer, "I don't think," which implies a doubt. In other words, you are only too willing to be asked, and if you are asked you will unhesitatingly and actively participate in the coming election?

A. Yes.

Q. Do you know Judge O'Dwyer personally?

A. No, sir.

Q. In the *World-Telegram* or the *Eagle* or the *Tribune* did you read any articles at all about the life of Judge O'Dwyer?

A. No.

Q. Have you discussed with Mr. Murphy or Judge O'Dwyer—

A. (Interrupting.) No.

Q. Of course the question in this case is not a question of the political career of Judge O'Dwyer—have you discussed

with anybody since Judge O'Dwyer came into office the activities of Judge O'Dwyer?

A. No, sir.

Q. Did you hear any speeches at any time over the radio?

A. No.

[fol. 2309] Q. Have you heard Judge O'Dwyer speak?

A. Yes.

Q. Has he, in any of his talks you heard, in any wise discussed his activity as a District Attorney?

A. No, sir.

Q. Would you feel, in view of the fact that you were merely waiting to be asked to actively engage in the forthcoming campaign, in any wise embarrassed in the jury room in the event that a situation were to arise where on the question of guilt or innocence of any one of the defendants on trial the jury were of the opinion that the verdict, the proper verdict in this case should be Not Guilty? Do you understand the question?

A. No.

Q. I say, in view of the fact that you would be willing to politically campaign for Judge O'Dwyer in the coming election, do you feel you might be embarrassed in the jury room in the event that the time came when, in discussing the evidence, the jury were of the opinion that there should be a verdict in this case of Not Guilty?

A. No, sir.

Mr. Rosenthal: No further questions.

Mr. Turkus: Mr. Butt and Mr. Harris are satisfactory to The People of the State.

[fol. 2310] Mr. Talley: Mr. Butt is satisfactory to the defendants. Mr. Harris is challenged by the defense.

(John D. Butt thereupon took Seat No. 10 in the jury box.)

(At the direction of the Court two more talesmen were called to the box: Max Woolf, No. 3027; Harry A. Aldridge, No. 3053.)

The Court: The Court will have to, without the presence of the panel, make an announcement about a legal point pertaining to conflict of jurisdiction. The jurors are admonished as to their demeanor. The Court now recesses until ten o'clock tomorrow morning.

Now the other members of the panel may go until ten o'clock tomorrow.

(In the absence of the jurors and talesmen, the following ensued:)

The Court: Now, the Court has ascertained by inquiry that the defendant Weiss will not be required in the Federal Court before Judge Campbell tomorrow morning. Nor does there appear to be any disposition on the part of the Federal Court to disturb the orderly progress of this trial. I was sure there was a mistake in the information conveyed to the Marshal. The Court is persuaded that the reason for the objection or alleged objection from the voice that [fol. 2311] came over the telephone is probably based upon some complaint that the late return of the defendants to the Federal House of Detention disturbs the ordinary process of meal hour at five o'clock. The fact that two of the defendants were taken, unmanacled, to Joe's Restaurant, where judges and other citizens dine, and where I could not dine that night because of the presence of the defendants, is sufficient answer to any complaint on the part of the Federal authorities that it is not safe for Uncle Sam to transport prisoners after dark.

Now, on the legal point: The Court decides as follows: When the authority of any prison wherein a defendant is serving a sentence produces such defendant in court for the purpose of trial on another charge, the prisoner's right of supervision and restraint is thereby in all respects yielded and subordinated to the authority of the trial court for all details of trial procedure.

That finishes what the Court states to be its finding as to the law.

To permit a Marshal at will to flaunt the Court by taking prisoners out during the progress of the trial would be preposterous.

Now, as to this particular case and the reason for night sessions: The difficulty in completing the selection of a jury [fol. 2312] necessitates long court hours. That is the only reason the Court, reluctantly, is obliged to overwork counsel and, temporarily, to put the defendants to inconvenience in regard to their meal hours.

After the jury shall have been sworn, the sessions will be from 10 until 4. Counsel have heretofore received the

Court's assurance on that point. It is a reasonable ruling, first, because counsel do not wish to go to Manhattan after the day's work in order to confer with their clients. It must be done in the pen. Secondly, because following such daily conferences, which are reasonable and necessary for the proper defense of the indictment, will enable the defendants to be taken back to the House of Detention in time for the regular meal hour without upsetting the placidity of that organization.

In the meantime, however, the question of mealtime convenience will have to be subordinated as trivial to a public necessity, which is that of completing this jury without further undue delay. It is hoped this will not consume more than one or two additional days. I think it can be stated with fairness by the Court, because the Court practiced law for twenty years as trial counsel, that short court hours in the selection of a jury tends to over-questioning [fol. 2313] and constitutes a form of filibuster; but when counsel work long hours they realize the value of time.

Mr. Climenko: May I most respectfully, on behalf of the defendant Buchalter, take an exception to so much of your Honor's remarks—

The Court: You may take exception to all.

Mr. Climenko: No, I take an exception to so much of your Honor's remarks as refer to the incident in connection with the meal at Joe's Restaurant. In connection with that exception, I merely want to say that the controversy of jurisdiction is one which has not been engendered by anyone on behalf of any defendant. I also except to so much as refers to filibustering.

The Court: The Court will permit you to take exception, but will not permit debate. The Court has made a ruling and you have your exception.

(At 7:30 P. M. the court adjourned until Wednesday, October 15, 1941, at ten o'clock a. m.)

[fol. 2314]

Brooklyn, N. Y., October 15, 1941.

Trial Resumed

HARRY A. WOOLF, a talesman, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. In making responses to the questions, will you be kind enough to keep your voice up so that the stenographer can make a record and counsel may hear your responses?

A. Yes, sir.

Q. How long have you lived at your present address?

A. About two and a half years.

Q. Prior to that where did you live?

A. Brighton Beach.

Q. How many years did you live there?

A. About fifteen years.

Q. Did you live in any other section of Brooklyn?

A. Williamsburg, prior.

Q. You are listed as an assistant manager.

A. In the Metropolitan Life Insurance.

Q. Does that mean you are a steady assistant?

A. Yes, sir.

Q. Where is your office?

A. Flatbush and Church.

Q. Do you go out with your various men to help them close contracts?

A. Yes, sir.

Q. I take it you supervise the activities of a half a dozen or more men in that field?

A. Yes, sir.

Q. Does your daily business bring you in contact with [fol. 2315] various people throughout Brooklyn?

A. Yes, sir.

Q. Do you have contacts in Brownsville or in the East New York section?

A. No, sir.

Q. Did you ever have any there?

A. No, sir.

Q. Do you know people who are in business in the garment center in Manhattan?

A. A neighbor of mine is a delegate in the Amalgamated Clothing Workers.

Q. What is his name?

A. Isidore Hollander.

Q. Is the name Murray Weinstein a familiar name to you?

A. I heard his name mentioned.

Q. Have you heard it mentioned by this neighbor?

A. Yes, sir.

Q. Is the name Samuel Katz, associated with the Amalgamated Clothing Workers of America familiar to you?

A. No, sir.

Q. Have you had many talks with your neighbor about the Amalgamated?

A. No, sir.

Q. In the event that the name of Murray Weinstein should figure in the testimony in this case, would you be in any wise embarrassed by jury service?

A. No, sir.

Q. Is there anything you have heard about Murray Weinstein that might prejudice you in the case?

A. I have not heard anything.

Q. So that the limit of your knowledge as to Murray Weinstein is the familiarity of his name as the result of this delegate?

A. Yes, sir.

[fol. 2316] Q. Are you on very friendly terms with Mr. Hollander?

A. No, sir; he is not there any more, he moved.

Q. For how long were you neighbors?

A. A little over a year.

Q. Do you know any firms or corporations that manufacture clothing, either men's or women's clothing?

A. No, sir.

Q. Through anything you may have heard, are the names of any of the other officials of the Amalgamated Clothing Workers of America familiar to you?

A. No, sir, with the exception of his brother; he has a brother I know.

Q. So you know both of the Hollanders by name?

A. I don't know the other one at all.

Q. You know one?

A. He being a neighbor there by me, yes, sir.

Q. One of the Hollanders was a neighbor of yours, and did you visit each other?

A. Yes, sir.

Q. Did you spend some time at each other's home?

A. Oh, yes.

Q. Your wives were friendly?

A. Yes, sir.

Q. Do you still maintain that sociability with Mr. Hollander?

A. No, sir.

By the Court:

Q. What Hollander is that?

A. Isidore Hollander, an officer of the Amalgamated Clothing Workers of America.

By Mr. Turkus:

Q. Is the name of Bruno Belia, an organizer, familiar to [fol. 2317] you?

A. No, sir.

Q. Or Salvatore Marazzano?

A. No, sir.

Q. Is the name of Tosca familiar to you, or that of Abie Slabow?

A. No, sir.

Q. Do you know any officials of Local 240 of the Clothing Drivers & Helpers Union?

A. None.

Q. Did you ever know any officials connected with any teamsters' union?

A. No, sir.

By the Court:

Q. Where you live, is that the new section that used to be the Brighton Beach Race Track?

A. No, sir, further down, just before that——

Q. It runs from Ocean Parkway to Coney Island Avenue?

A. Yes, sir, just two blocks.

Q. Out toward the Coney Island Hospital?

A. No, sir, about three blocks below.

Q. South?

A. Yes, sir.

Q. Which side of Neptune Avenue?

A. Well, Neptune Avenue runs parallel, the same way.

Q. South or north?

A. South.

By Mr. Turkus:

Q. The Dewey investigation was handed down several months after Judge O'Dwyer took office?

A. Sometime in May, 1940.

Q. Did you hear any discussion by Mr. Hollander or anyone in connection with the O'Dwyer investigation or this indictment?

[fol. 2318] A. No, sir.

Q. In anything you have discussed or heard, is the name Lepke familiar to you?

A. I read it in the newspaper.

Q. Did you hear anything from Hollander in regard to the name Lepke?

A. No, sir.

Q. Is the name Gurrah familiar?

A. No, sir.

Q. Going along with any possible contact you may have had in the clothing district, do you know any manufacturer of women's or men's clothing?

A. No, sir.

Q. Anyone in the distribution of clothing?

A. No, sir.

Q. Do you know anybody connected with any union officials in the clothing trucking end?

A. No, sir.

Q. Is the reading you have had concerning the name Lepke of recent origin?

A. Yes, sir.

Q. Does it leave you with an impression?

A. Some impression.

Q. Has it been reading matter in connection with the recent indictment?

A. Yes, sir.

Q. You say you have some impression?

A. Yes, sir.

Q. Is that an impression that is detrimental to the defendants?

A. It may be.

Q. I am trying to save time, and, while this is a matter of the defense counsel to go into, it would be senseless for me to go through a lengthy voir dire if you are going to be, for some reason, unable to sit in the box, so I will pursue [fol. 2319] this line of inquiry. When you say, "It may be," that denotes some sort of doubt in your mind. Is there any doubt?

A. When I read about the case, naturally, at that time, I had my mind set in regard to it.

Q. How long ago was that?

A. A couple of weeks ago.

Q. So that, based upon the reading matter, you formed a definite opinion?

A. Yes, sir.

Q. Did that opinion go to the guilt or innocence of the defendants?

A. Yes, sir.

Q. Was it that kind of an opinion that is detrimental to the defendants?

A. Yes, sir.

Q. Is it an opinion that would require evidence on their part to remove?

A. Yes, sir.

Q. Even if you were instructed by the Judge that the defendants have no burden, is your opinion so strong you would still require evidence?

A. No, sir, I don't think so.

Q. As you sit in the box, do you believe you can give these defendants a fair trial?

A. I think so.

By the Court:

Q. You can lay aside your impression?

A. Yes, sir.

Q. Disregard it?

A. Disregard it.

Q. Are you positive?

A. Positive.

By Mr. Turkus:

Q. Have you ever had any prior jury service in criminal cases?

A. Ten years ago.

Q. Was it in the County Court of Kings County?

A. Yes, sir.

[fol. 2320] Q. Are there any lawyers in the court-room who were in that case?

A. No, sir.

Q. Do you recall the name of the judge?

A. Judge Nova.

Q. Do you recall the name of the prosecutor?

A. Abe Kesselman.

Q. Was he the prosecutor?

A. No, sir, he was the defense lawyer—Judge Sabatino.

Q. In the trial of a criminal case the Judge utters the law to the jury and he tells the jury of the constitutional rights that every defendant has in the court-room.

Q. I am here to see that these defendants get every constitutional right they are entitled to, no more and no less.

A. Yes, sir.

Q. As you sit in the box can you give them that—no more and no less than they are entitled to?

A. Yes, sir.

Q. Is the only impression, the one you say you can lay aside, formulated upon newspaper reading exclusively?

A. Yes, sir.

Q. At any time since the O'Dwyer investigation did anybody speak to you about any of the defendants in this case?

A. No, sir.

Q. The charge being murder in the first degree, the prosecutor must inquire as to whether you have any scruples, conscientious or otherwise, against capital punishment.

A. None at all.

[fol. 2321] Q. It has been brought out by one of the lawyers for Bechalter, that he has been convicted of other crimes and is presently serving a long jail term. What I want to know is would you relax your duty as a juror solely because a man has been convicted of other crimes and is presently paying the penalty for the commission of those offenses?

A. No, sir.

Q. Would you deviate from what is a proper result in this murder charge because of his present incarceration?

A. No.

Q. Have you been in the insurance business for some length of time?

A. Sixteen years.

By the Court:

Q. Are you a member of the "1245"?

A. No, sir.

Q. That meets up the block from the bank building where you are located?

A. No, sir.

Q. Is Donald Sinclair a friend of yours?

A. No, sir. I know him well, he was the manager

Q. You knew him well?

A. I have heard of him, he was with our company.

Q. He is dead now two years.

A. Yes, sir.

Q. Who is the present manager of your office?

A. Mr. Demitrot(!).

Q. You say Mr. Demitrot is your manager now?

A. Yes, sir.

Q. How many assistant managers are there?

A. Five.

Q. How many collectors?

A. Thirty-five.

Q. The assistant managers have charge of a number of
[fol. 2322] collectors?

A. Yes, sir.

Q. Mr. Demitrot is now there?

A. No, sir; he is there about six years, at Flatbush and Church.

By Mr. Turkus:

Q. I got to the point where I was endeavoring to ascertain whether your livelihood in any particular depends upon the good will of any union official or anyone connected with the clothing industry or the distribution of clothes.

A. No, sir.

Q. I have spoken of various names as I went through this voir dire with each juror. Is there any familiarity with any of the names I mentioned?

A. No, sir.

Q. Do you have any connections inside of Sea Gate?

A. No, sir, but I have a cousin of mine.

Q. What is his name?

A. Cook.

Q. Do you know anybody named Max Silverman?

A. No, sir.

Q. A one-time resident of Sea Gate?

A. No, sir.

Q. A one-time official in the flour trucking game?

A. No, sir.

Q. Is the name of Wolfe Goldis at all familiar?

A. No.

Q. Or the name of William or Willie Alberts, a one-time bondsman, is that name familiar?

A. No.

Q. Has your reading been extensive about the Dewey and O'Dwyer investigations?

A. Not too extensive.

Q. But those names are familiar to you by newspaper reading?

A. Yes, sir.

Q. Is the name of Emanuel Buchalter a familiar name to [fol. 2323] you—not Louis, but Emanuel?

A. No, sir.

Q. Or Philip Kowas?

A. No, sir.

Q. As I explained to you, the Judge will charge you on the presumption of innocence, the doctrine of reasonable doubt, the burden of proof, and other rules necessary for a jury to apply to the proof in a criminal case. Will you, if accepted as a jurymen, conscientiously endeavor to apply those instructions of law to the facts in this case?

A. Yes, sir.

By the Court:

Q. Do you belong to Rabbi Geller's congregation?

A. No, sir. I belong to the Brighton. He is not with us.

Q. You belong to the temple?

A. The temple?

Q. The one on Ocean Avenue?

A. No, sir, the one on Neptune Avenue and East 6th Street.

Q. Is that Rabbi Geller?

A. Yes, sir, but he is not there any more.

Q. Have you had any talks or overheard any talks there?

A. No, sir, I was not present at the talks.

Q. You do not belong to the men's club?

A. No, sir.

By Mr. Turkus:

Q. I take it you are married and reside with your family at the address given?

A. Yes, sir.

Q. Do you know whether or not the manager of your branch ever served on any one of these juries since Judge O'Dwyer has been District Attorney?

The Court:

[fol. 2324] Q. Rabbi Geller used to have a congregation on Neptune Avenue east of Ocean Parkway, a short distance from your house?

A. I know him.

By Mr. Turkus:

Q. You may have heard some discussion about accomplices. You have heard the lawyers and the Judge and possibly the prosecutor speak about accomplices?

A. Yes, sir.

Q. Is your understanding of the word "accomplice" that it is one who himself has participated in the commission of a crime?

A. Yes, sir.

Q. Do you find any fault with the District Attorney of the county or with the prosecution wherein, in order to solve a murder, that is, to break a case from the inside, the testimony of one of the participants is accepted and used against the other participants on trial?

A. No.

Q. Do you find any fault either with the prosecutor availing himself of that kind of testimony or with the prosecution which employs it?

A. No, sir.

Q. With respect to an accomplice, you will be given certain rules or tests to apply to that witness from the standard of ascertaining his credibility or believability. Do you understand?

A. Yes, sir.

Q. In addition, from your experience in life, you have gathered other tests which you apply to people in determining whether they speak the truth?

A. Yes, sir.

[fol. 2325] Q. Will you bear uppermost in your mind that common sense and apply the tests that have come down through the years, aside from the accepted rules, to find out does this accomplice not only speak the truth about his participation, but does he speak the truth about the group or combination participation of the defendants with him in the commission of the crime? Is that clear?

A. Yes.

Q. If accepted, will you devote your mental faculties to finding out not only does this accomplice speak the truth concerning himself, but does he tell the truth about the group or combination participation of the defendants in the commission of the crime?

A. Yes.

Q. It may well be that you may not like an accomplice. When you see him on the stand, you may not like him. As a matter of fact, you may detest him. I do not know your personal feelings toward him, nor do I care. May I understand that it is not whether you like him or not that counts—it is whether he tells the truth about these defendants that counts?

A. Yes, sir.

Q. For example, if you find that an accomplice speaks the truth about the defendants and that under the law the Judge gives you there is corroboration, and you are satisfied the defendants at the bar of justice are guilty, just because you do not like the accomplice, you would not acquit three defendants who are guilty of murder, first, would you?

A. No, sir.

[fol. 2326] Q. Will you bear uppermost in your mind that that it is not our personal like or dislike for accomplices; we are here to do a job for The People of the State of New York and for the defendants on trial, and to ascertain are they guilty under the rules of evidence, or are they innocent.

Mr. Climenko: I object to that as a misstatement of the law.

The Court:

Q. If the Court should charge you that in order to convict, the defendants would have to be shown to be guilty beyond a reasonable doubt, will you follow those instructions?

A. Yes, sir.

By Mr. Turkus:

Q. In other words, when we get through with this case, if you have a reasonable doubt about the guilt of the defendants, you go ahead and acquit them. All I want to know is this: When we get through with all the evidence

in the case, if you find they are guilty beyond reasonable doubt, you will convict them, do you understand?

A. Yes, sir.

Q. And whether you like an accomplice or do not like him, as long as you are satisfied beyond a reasonable doubt that these three men are three of the killers of Rosen.

A. Yes, sir.

Q. There may be some talk, and there has been by one of the defense lawyers, about what the charge is here—that is, that the defendant—and that applies to all defendants—are here to meet one charge, the charge in this indictment. [fol. 2327] That is all they are here to meet. I want to know if you understand, by the same token, the District Attorney is here to establish the guilt of the defendants on only one charge and nothing else. We are both limited to that charge in this indictment.

A. Yes, sir.

Q. Another of the defense lawyers has spoken to the other jurors about character evidence—that the character of the defendants is not at issue. He has properly said that. The character of a defendant is never in issue unless the defendant himself chooses to put it in issue by putting on witnesses who will testify to his good character. Then the District Attorney can bring witnesses that can tell you about his bad character, if that be the case. So that character does not figure in a criminal case unless the defendant elects to put it before the jury.

A. Yes, sir.

Q. So we are not here to determine character, we are here to determine the guilt or innocence of the defendants under rules of law. Now, with respect to the allocation of evidence—You will get rules from the Judge, and when you hear the rules you will understand that, obviously, a piece of testimony may apply to one defendant alone. You see, the prosecutor cannot prove his case except by witnesses, piece by piece. The jury is the only “witness” that has common sense. So, during the course of the testimony, under the rules the Judge gives you, parts of the testimony [fol. 2328] will apply to all defendants and parts of it will apply to one or more, and it will be your job, as a juror, to put the evidence where it belongs and against the defendants whom it hits.

A. Yes, sir.

Q. Will you, if accepted, do that?

A. Yes, sir.

Q. As I go along, is there anything in the back of your mind, is there anything in the manner in which you earn your livelihood or in the past experience that you have had, that would prevent you from doing your job as a juror in full faith to The People of the State and giving the defendants everything the law says they should have?

A. No, sir.

Q. Will you, if accepted as a juror, by your verdict endeavor to do justice in this case?

A. Yes, sir.

Q. If, after you have heard every piece of evidence in the case and you have talked the case over with the other jurors with common sense and understanding, and after you have devoted your mental faculties to finding out whether what you heard in the court-room is the truth about these defendants, and after you are satisfied of their guilt beyond a reasonable doubt, will you reflect that in your verdict?

A. Yes, sir.

Q. And there is no reason why you cannot say so without fear and hesitation, if you find them guilty?

A. Yes, sir.

Q. If you are satisfied as to their guilt, you will pronounce that verdict?

A. Yes, sir.

Q. Can I take your word for that?

A. Yes, sir.

By Mr. Turkus:

Q. (To Mr. Aldridge, juror in box) What do they call that [fol. 2329] section where you live?

A. Flatbush.

By the Court:

Q. East 33rd Street and Glenwood Road—that is Vandeveer Park?

A. Yes, sir.

Q. You are between Foster and Glenwood?

A. Between Glenwood and Avenue H.

Q. You voted at the corner of 31st Street and Glenwood Road?

A. November 1st last, I have been there.

Q. Do you belong to any local organization?

A. St. Stephens Church.

Q. That is at the corner of 31st Street?

A. On Newkirk Avenue and 29th Street or 28th Street.

Q. That is your old parish?

A. I am still a member of the men's club there.

Q. Has that a men's club?

A. Yes, sir.

Q. Have you heard any discussions there on this case?

A. Mr. Kopff is a member.

Q. That is years ago?

A. Yes, sir, some years.

Q. That is St. Stephens Lutheran Church?

A. Yes, sir.

Q. Have you discussed this case with anybody?

A. No, sir.

By Mr. Turkus:

Q. I believed that you explained to Judge Taylor that you have rather recently moved in that neighborhood.

A. Yes, sir.

Q. Where did you live before that?

A. 2415 Newkirk Avenue, right off Bedford.

[fol. 2330] Q. Is that likewise Flatbush?

A. Yes, sir.

Q. Did you live there for a number of years?

A. Three.

Q. Prior to that you lived in some other section—

By the Court:

Q. You are a neighbor of Mr. Von Lahn?

A. I don't recall the name.

Q. He lives on one of those corners and he belongs to St. Stephen's Church.

A. I don't recall the name. I know very few neighbors. I am in the house with Mr. Downey; I don't mingle with neighbors.

By Mr. Turkus:

Q. I inquired as to whether you lived in a different section of Brooklyn than Flatbush.

A. In the last twelve years I lived in Flatbush.

Q. You are listed as a manager, without any further designation.

A. Manager of an insurance brokerage office.

By the Court:

Q. I made a mistake about Mr. Von Lahn; he lives on Foster Avenue and 24th Street, a block away from you.

By Mr. Turkus:

Q. What insurance brokers are you employed by?

A. S. Greenwald.

By the Court:

Q. How well do you know Mr. Downing?

A. Since I moved in this house in November, 1940.

[fol. 2331] Q. You know he is a retired police lieutenant?

A. Yes, sir.

Q. Did he ever talk to you about the case?

A. I would say no, your Honor. I mean now and then a name might come up, but we never discussed it.

Q. Has he ever discussed Judge O'Dwyer?

A. I mean occasionally an article may show in the paper and it may start up for a few minutes, and then it would shift off to another conversation.

By Mr. Turkus:

Q. Have these talks made any impression on you about this case?

A. Not those talks, but I have got an impression.

Q. Then Mr. Kopff lives right near you?

A. Yes, sir.

Q. That is near your old address?

A. Yes, sir.

Q. Did you visit his house?

A. Never.

Q. You have some impression from Barney Dowd?

A. I have, a thought.

Q. You rent part of his house?

A. Yes, sir.

Q. Have you talked to other members of the police force?

A. No, I have not.

Q. Are you talking about the same man? Do you mean Captain Barney Dowd?

A. Retired.

Q. The man who was in charge of the Tom Dewey investigation in Manhattan?

A. I don't know that; he has been retired two years.

Q. Is this Downs?

A. Downs.

Q. I thought you were speaking of Barney Dowd; I had [fol. 2332] not known he had retired, so I was confused. You speak of a lieutenant in the police named Downs?

A. Yes, sir. I understood he was a captain.

Q. Was he a uniformed or detective captain?

A. He was in uniform there and at times he was in plain clothes.

Q. He may have been a detective captain, in charge of some squad, do you know?

A. That I would not know.

Q. You have indicated that you have got some impression. I don't want to go through any lengthy voir dire if you are going to remain with us, if that is the kind of an impression you carry with you, as you indicated you attach, and you had some knowledge from other sources other than the conversation with this police lieutenant, am I correct?

A. Yes.

Q. Was it with any law enforcement agent who spoke to you?

A. No, sir, it is mostly reading matter; and, another thing, I have insurance which may affect people I know. In this case I made an impression.

Mr. Rosenthal: I understand this man originally made an excuse at the time of his application—he said he was prejudiced, so instead of wasting any further time I will challenge him now, to save time.

HARRY H. ALDRICH, residing at 1595 New York Avenue, Brooklyn, New York, being sworn on the challenge, testified as follows:

[fol. 2333] By Mr. Turkus:

Q. As I understand, you are in the insurance business.

A. Yes.

Q. Your business has brought you in contact with people in the garment or clothing industry?

A. Yes, sir.

Q. And that there you have heard certain things in reference to one or more of the defendants on trial?

A. I have heard the name mentioned in various conversations. Whether there is any connection, I don't know.

Q. Have you heard the name of Lepke in the garment district?

A. Yes, sir.

Q. Have you heard the name of Gurrah?

A. Well, no.

Q. Shapiro?

A. Yes, sir, I have heard of Shapiro.

Q. In addition to that you have had some discussions with a retired police officer?

A. I would say yes.

Mr. Rosenthal: I don't see any sense in going through a long examination.

The Court: Yes.

Mr. Rosenthal:

Q. Mr. Aldridge, you applied, when you were originally called, to be excused on the ground you were prejudiced.

A. Yes, sir.

Q. Does that prejudice extend to any one of the defendants in this case on trial?

A. I would say it does.

Q. And it would necessitate evidence of a character to [fol. 2334] remove that prejudice from your mind as to these defendants?

A. I would consider it would take a lot of evidence.

Mr. Rosenthal: Challenge for cause.

The Court: Challenge sustained.

By Mr. Barshay:

Q. Mr. Woolf, do you know anyone at all in the District Attorney's office?

A. No, sir.

Q. Have you personally ever been the victim of any crime?

A. No, sir.

Q. Have you read something about the defendants in the newspapers?

A. Yes, sir.

Q. I take it you are a fair enough man to say that it is unfair to form any impression about people by just reading about them?

A. Yes, sir.

Q. I would not want to be judged that way, nor you would not want to be judged that way?

A. No, sir.

Q. Nevertheless, people sometimes do get impressions, whether they want to have them or not—you volunteered you had?

A. Yes, sir.

Q. As you entered the jury box did you have that impression which is adverse to any of the defendants?

A. I did not give it a thought.

Q. Has reference to the defendant Buchalter by the name of Lepke influenced you in any way?

A. No, sir.

[fol. 2335] Q. Does the fact that you know a man named Hollander, who has something to do with the Amalgamated, influence you in any respect?

A. No, sir.

Q. It is a fact that other jurors while being questioned in your presence, some of them have certain ideas—does that influence you at all?

A. No, sir.

Q. Your mind with respect to the guilt or innocence of any of the defendants is not set?

A. No, sir.

Q. Will you give us your word of honor that the defendants will start off from scratch if you are chosen as a juror?

A. Yes, sir.

Q. And the testimony shall come forth from witnesses here, that is the only testimony you will listen to and decide upon?

A. Yes, sir.

Q. If, as a matter of fact, something should creep in your mind as a result of what you read or heard, you will dissipate that?

A. Yes, sir.

Q. And subordinate any thought you had about this defendant to the testimony in this case?

A. Yes, sir.

Q. To sustain our form of government, as Mr. Turkus has told you, we must get twelve men who start out with neither thought nor favor on either side.

A. Yes, sir.

Q. And the only way we can find out is by our questions to jurors to search their minds in advance because, while in reality you have nothing to do with punishment, the fact [fol. 2336] remains if you are convinced beyond a reasonable doubt they are guilty, the law fixes a punishment for you, and that is death.

Mr. Turkus: I object to that.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Have you ever had any experience with members of the Police Department?

A. No, sir.

Q. The District Attorney starts off with the finding of the indictment. You have heard of that before?

A. Yes, sir.

Q. That is the paper which starts the trial—an accusation; that is all it is.

A. Yes, sir.

Q. Do you agree with that?

A. Yes, sir.

Q. The Grand Jury heard the witnesses on one side only, and voted the indictment and filed it in this court, and said they accuse, through the District Attorney——

Mr. Turkus: I object to that.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. When this paper is filed here—and the Judge is going to tell you this——

The Court: The indictment is only an accusation; you cannot bring a person to trial without the accusation being put in writing.

The Talesman: Yes, sir.

[fol. 2337] Q. He came here and said, "Not Guilty." That made the accusation. So when Mr. Turkus said to you, "The defendants are here to meet the charge," I have an idea what it meant, but I want you to get it straight—that

meant the charge. Now he must come forward with the proof. We meant it when we said, "Not guilty."

A. Yes, sir.

Q. We do not have to meet it by proving ourselves innocent or by convincing you we are innocent or offering any facts to show he is innocent.

A. Yes, sir.

Q. You are in accord with that?

A. Yes, sir.

Q. He must prove his case in a certain fashion prescribed by law. To put it simply, he has to call witnesses whom you believe—whom you believe, not what he accepts—not what he accepts—not that anyone else accepts—but whom you believe after you hear them testify on direct and cross-examination. You as an individual are the only one to determine—you as our part of this jury—whether or not the District Attorney is offering the quality of proof that you, as a juror, should accept. Now, no one can evade that problem. I don't intend by that to say that you should argue in your jury room with any juror, because I hope the jurors act harmoniously, but if you, as an individual, do not see the evidence in the same light, after you use the common sense and understanding which you have—your province is to decide it from the evidence. You follow me?

A. Yes, sir.

[fol. 2338] Q. The law goes further than what I told you—it says every defendant is presumed to be innocent under the law—that goes to these defendants here—they are presumed to be as innocent of this charge as you *are* I am.

A. Yes, sir.

Q. And you are in accord with that?

A. Yes, sir.

Q. That presumption of innocence you must give them throughout the entire trial.

A. Yes, sir.

Q. Will you do that?

A. Yes, sir.

Q. You understand that this presumption is the very foundation of the administration of criminal law?

A. Yes, sir.

Q. When he said, "Not guilty," everything included in the main charge or the subdivision, that he is an accomplice, and ending with he aided, counseled or advised in the commission of this crime, by his plea of Not Guilty he puts it at

issue and causes him (indicating the District Attorney) to assume the burden of proof on every one of these allegations.

A. Yes, sir.

Q. And you will make him do that?

A. Yes, sir.

Q. And you will make him do it beyond a reasonable doubt?

A. Yes, sir.

Q. That is a definition which you shall get from the Court; no lawyer is permitted to define it. You will follow that law?

A. Yes, sir.

Q. Your ideas about what the law should be or was, will all be subordinated to what the Court shall tell you?

A. Yes, sir.

[fol. 2339] Q. When the District Attorney comes forth with evidence, you will look upon the people who give it and say, "Who is he? What is he? Shall I believe him or shall I not believe him?"

A. Yes, sir.

Q. You will find if he is a man, if he is an honest man, who has no motive to falsify, has not been induced by some favor or treatment to falsify, and will you accept his testimony?

A. Yes, sir.

Q. That will be up to you?

A. Yes, sir.

Q. Then we come to the other part. Supposing the District Attorney—I don't know, but suppose—presents to you people who are entirely free of any clean background, who had all their lives, they will say, lived a life of crime, existed on a life of crime, robbed, cheated, murdered and perjured, shylocked and extorted—each one of these demerit marks added on to that person's background—you will with greater care look upon his testimony?

A. Yes, sir.

Q. The worse he is, the greater caution you will use?

A. Yes, sir.

Q. Because the Court shall tell you that with suspicion you must look upon the testimony of an accomplice; you understand?

A. Yes, sir.

Q. Mr. Turkus defined to you the meaning of the word "accomplice" as one who "participates in the commission of a crime." You will have a definition from the Court, [fol. 2340] and as he propounded it to you I will take the liberty to say that that is not my idea of an accomplice—one who participates in the commission of a crime is a perpetrator. Now he comes to the point that he exculpates somebody else and then he becomes more brazen and claims to be an accomplice to that somebody else.

Mr. Turkus: I object to this.

The Court: That is a matter for the charge. Objection sustained.

Q. In other words, if someone comes here and says, "I am an accomplice," you will find out, use your own judgment, based upon the two principles I have given you, whether or not he is really an accomplice—he may claim to be, but you are not bound to accept it, are you?

A. No, sir.

Q. You will want to know why does he say he is Buchalter's accomplice—what motivates him—is it revenge or what other motive? Is it to escape the punishment for a murder that he himself has committed?

A. Yes, sir.

Q. Those are the tests allowed by law and given to you.

A. Yes, sir.

Q. He may be telling the truth, I don't know, that he participated in the commission of the crime, but, on the other hand, it will be for you to decide whether or not he is lying with respect to any participation of Buchalter in the commission of this crime. That will be for you to decide.

A. Yes, sir.

[fol. 2341] Q. You will take into consideration that at some time or other this person, under oath, when asked about the very thing as to whether he participated or was an accomplice in this case, he said that he was not. You will take that into consideration?

A. Yes, sir.

Q. I guess you will take into consideration every important fact, and among others whether these men who now claim or who will claim to be accomplices of Buchalter have ever spoken to or seen him.

Mr. Turkus: Objected to as repetitions.

The Court: Objection sustained. I will state more specifically my viewpoint is that in the examination of jurors it is not permissible to educate them on legal questions. It is only permissible to find out whether they are fair and impartial, and disinterested. The questions asked here are largely matters for summation and matters for the Court to charge, and those matters are not permissible on preliminary examination. The reason the Court has not interrupted is because it would only create disorder because of dissension by counsel with the Court's view in the matter, and I prefer an orderly trial. I am obliged to sustain an objection when an objection is made based on that policy. That seems to be the fault here and the reason why it has taken so long to select a jury.

I think you have seen by the Court's questions that the [fol. 2342] Court has taken the viewpoint that the question of finding out the source of the information or discussion that a juror may have had with people outside, or from reading papers or otherwise is, according to the Court's notion, the uppermost point to be considered.

Mr. Barshay: I just wanted you to know that I pursued this line of inquiry right through, without objection.

The Court: That is the only reason you got away with it. I say that with due respect.

By Mr. Barshay:

Q. In any event, without going into great detail, you will take everything into consideration before you say to the person—in your own mind, of course—"Your testimony I believe," or "Your testimony I must reject and I will reject"?

A. Yes, sir.

Q. Of course, you understand, because Mr. Turkus said that the District Attorney is expected to use testimony of an accomplice to solve a crime, that is not proof—that will have to come from the witness stand before you accept it—nothing is so hard as proof.

A. Yes, sir.

Q. When you come to the point of whether one accomplice corroborates another—the Court shall tell you one cannot corroborate another—you understand that?

A. Yes, sir.

Q. Some man or some group of people may claim they are not accomplices, and others may contend they are. The [fol. 2343] Court gives you the privilege, the right, and the duty to decide whether they are or not. You will take everything into consideration to find out whether they are or whether they are not?

A. Yes, sir.

Q. But if the Court shall tell you as a matter of law that someone is an accomplice, then there will be no quarrel with that—that you will accept?

A. Yes, sir.

Q. If you find that all the testimony comes from accomplices, you will look for corroboration tending to connect the defendants with the commission of the crime?

A. Yes, sir.

Q. Because if you believe an accomplice alone, assuming you do, that is not enough. You agree with that law, and you will follow it as his Honor charges it to you?

A. Yes, sir.

Q. You will want to know, who are they that come here and tell you and give evidence which tends to connect the defendants with the commission of the crime? What have they in mind? What do they hope to gain?

A. Yes, sir.

Q. What are they going to get for it?

A. Yes, sir.

Q. And no matter how many times they deny having hope for reward, it will be for you to decide whether they do or do or do not?

A. Yes, sir.

Q. You will want to know, "What is the background of the corroborating testimony? Are they murderers, robbers, thieves? Are they escaping punishment? Do they hope to escape?" You will consider all that?

A. Yes, sir.

[fol. 2344] Q. Not every man comes here to tell the truth that swears he will.

A. No, sir.

Q. So you become a judge, a searcher for truth, you judge the facts, you accept or reject them as you see fit.

A. Yes, sir.

Q. That is all from the People's side. Now, the defendant may take the stand and he may not—I do not know at present. If he does not, and the Judge tells you you may

not use that against him, I take it that you won't use it against him by any stretch of the mind or imagination, nor would you let it creep into the case?

A. Yes, sir.

Q. If some juror, by any chance, should say, "Well, why didn't he take the stand?" you will reasonably call it to his attention?

A. Yes, sir.

Q. You must not use it against him?

A. Yes, sir.

Q. If some should decide to take the stand and others should not, that rule still applies. It is for their lawyers to decide how to handle the matter, as they see fit.

A. Yes, sir.

Q. So evidence may come forth from people that is only binding on X, Y, or Z, and the Judge will tell you it is not binding on anybody else, and you will not use it to bind anybody else unless the Judge says you may, and if the case takes for trial a week or two or three or six, you will keep that in your mind?

A. Yes, sir.

Q. Maybe some facts here are subject to two interpretations, innocence and guilt. If they are subject to two, and the Court tells you you must, under the conditions, give it the innocent interpretation, you will not have any trouble following that law?

A. No, sir.

Q. If there is a doubt in your interpretation you still must give it to the innocent one?

A. Yes, sir.

The Court: That does not mean that if one person says one thing which means guilt, and another person says another which means innocence, that you shall resolve it in favor of innocence; but if the fact is established and it is consistent with innocence, then it cannot be viewed as evidence of guilt.

By Mr. Barshay:

Q. That is clear?

A. Yes, sir.

Q. There may come a question of association between one party and the defendant Buchalter. If that fact causes you to believe that it is an innocent association, or you are doubtful, you will give it the innocent interpretation?

A. Yes, sir.

Q. These three men are being tried together, but in reality they are getting separate trials. You must render a separate judgment in each case. Will you do that?

A. Yes, sir.

Q. When Mr. Turkus speaks of group, combination, group, as he used it, you still must decide each defendant's guilt separately and definitely keep in mind the allocation [fol. 2346] of evidence as against each one?

A. Yes, sir.

Q. You are not to decide the guilt or innocence of any man under the law—the Court will tell you that—you are here merely to decide whether or not the District Attorney has proven anyone guilty beyond a reasonable doubt.

Mr. Turkus: I object to the preamble, because, as a matter of fact, that is what the jury does—determine the guilt or innocence.

Mr. Barshay: As a practical fact, that is, but not as a legal proposition, and I am asking the jury to take the law from the court.

The Court:

Q. Will you take all instructions on the law from the Court?

A. Yes, sir.

The Court: The objection is sustained.

Mr. Barshay: Exception.

Q. After all the explanations have been made to you, is there somewhere in the back of your mind the fact that before you came into the jury box you had a set idea about this case?

A. No, sir, it is not a set idea.

Q. Or whatever it was.

A. A thought.

Q. You in your mind now can say, "If I take the oath to be a fair and impartial juror, I will keep that oath"?

A. Certainly.

By Mr. Cuff:

Q. What papers do you read?

A. The *News*, the *Mirror*.

[fol. 2347] Q. I understood you to say you had read about this case and about these defendants.

A. Yes, sir.

Q. And up to a couple of weeks ago your mind was set, definitely set?

A. Not definitely. Well, I read it, I had an opinion about it.

Q. See if I recall it exactly. If I do not, correct me. I think I have it noted here you said you had your mind set a couple of weeks ago.

A. Yes, sir, that is not definite.

Q. See if I can get it right. I am not trying to pry into your business or anything except to find out what word I heard, and as to whether or not you will make a fair and [fol. 2348] impartial juror.

A. Yes, sir.

Q. You used the word "set" yourself?

A. Yes, sir.

Q. Do you understand the word "set" to mean "firmly fixed"?

A. No, sir.

Q. It does not mean that to you?

A. No, sir.

Q. How long did you continue to read the *Mirror* about this case?

A. Once or twice.

Q. Did you read these other articles that appeared in the *Mirror* about this case and about these defendants or some of them?

A. No, sir.

Q. Will you tell me when you read the *Mirror*?

A. A couple of weeks ago, just glanced over it, I just read about the case—well, I read and in my mind, you know, I had a thought.

Q. You say now there was only one article you read?

A. Not the full article, just a part of it; I was not very much interested.

Q. Was it only one article?

A. As far as the papers are concerned, I do not read full articles.

Q. Was it only one article or part of only one article which you read?

A. Part of one or two.

Q. How many articles did you read in the *News* about this case or about these defendants?

A. I just glanced over it. If I had a little spare time I would go to that page and read it, not intentionally.

Q. In any event, no matter how you read it, whether [fol. 2349] casually or not intentionally, you did get a set idea in your mind then?

A. Yes, sir.

Q. Did you see the article in the *Mirror* in which at the bottom of the page it said there would be another article the next day?

A. No, sir.

Q. When you came into court, when you were summoned to attend in court, you had that set idea in your mind, didn't you?

The Court: Are you using the word "set" as you understand the meaning or as the witness has testified to his understanding?

Mr. Cuff: I am using the word the witness used. I am not using it in any particular sense. I am using the word the witness used, and I think I have a perfect right to do so.

The Court: He has explained the meaning of the word; he has shown by his answer to you his understanding of the word "set" is not in accordance with its common acceptance; therefore I shall have to rule you cannot go any further as to the use of the word "set."

Mr. Cuff: I understand I cannot use the word the witness used?

The Court: Yes. It only tends to confuse the record in the event of a subsequent review.

Mr. Cuff: I note an exception.

[fol. 2350] By Mr. Cuff:

Q. This doubt you had in your mind, did you have it in your mind when you were summoned to appear here?

A. I did not know what case was on when I was summoned to appear here. I had it in mind.

Q. You had it in mind when you came to court yesterday morning?

A. Yes, sir.

Q. You had it in mind when you got in the jury box last night?

A. No, sir.

Q. When did you put it out of your mind?

A. When I was sitting here yesterday.

Q. You put it out of your mind definitely?

A. Yes, sir.

Q. It was not because of anything you heard?

A. No, sir.

By Mr. Rosenthal:

Q. Mr. Woolf, is it clear to you that me and my associates represent one defendant—I want to get set in my mind the answers you gave to Mr. Turkus—and if I am wrong in anything I say you said, you correct me—you told him, didn't you, that you were a neighbor of the delegate of the Amalgamated Clothing Workers Union?

A. Yes, sir.

Q. Whose name was Hollander?

A. Yes, sir.

Q. And you visited him and he visited your house. I assume you played cards together with each other?

A. Yes, sir.

Q. You were very friendly?

A. That is right, friendly.

Q. Friendly as neighbors, as one visiting one another's [fol. 2351] house, and your wives visiting one another?

A. Yes, sir.

Q. In the course of the conversations you had with Mr. Hollander, whose brother you also know——

A. No, I don't know his brother at all.

Q. He had a discussion, his brother with you?

A. I know he was his brother.

Q. You knew that through him?

A. Yes, sir.

Q. You also heard discussed the name of one Murray Weinstein whose name was mentioned here, discussed by Mr. Hollander?

A. Yes, sir.

Q. You were asked by Mr. Turkus whether you had read about the defendant and you said you had read about him in the paper.

A. Yes, sir.

Q. Let us start there. What papers had you read about him?

A. In the *News*.

Q. Over what period of time did you read about him?

A. Well, maybe once or twice, about a couple of months.

Q. Did you read the *Mirror*?

A. Not always.

Q. Did you glance at any article in the *Mirror*, or had you forgotten about it when I recalled it—had you forgotten about having read the *Mirror* or some parts of the articles in the *Mirror* when you were questioned by Mr. Barshay and Mr. Cuff?

A. No, sir, I told them I read it in the *Mirror*.

Q. You read, you said, about this particular case in the paper?

A. Yes, sir.

[fol. 2352] Q. And as a result of what you read, you told Mr. Turkus that you had some impression?

A. Yes, sir.

Q. Then you next told him, if I recall correctly, in answer to his question, that that impression which you had gained was detrimental?

A. That is right, yes, sir.

Q. Then, if I recall, he questioned you, when telling you he did not want to go into a long question, if finally there would be some objection, and he asked you about whether that impression you had was in respect to this case, and your answer was, "My mind was set in regard to this case"?

A. That is right.

Q. When you said to Mr. Turkus, "My mind is set in regard to this case," what did you mean by the word "set"?

A. I meant that at the time I read the papers I thought, according to my knowledge of the case, from the reading that the defendants were guilty.

Q. So that is what you meant when you said, "My mind was set"?

A. Yes, sir.

Q. At the time you read this paper concerning the guilt or innocence of one or more of the defendants on trial in this case?

A. Yes, sir.

Mr. Rosenthal: I challenge the talesman for implied bias.
The Court: Try the challenge.

MAX WOOLF, of 623 Crawford Avenue, Brooklyn, New York, was then sworn as a witness on the challenge.

[fol. 2353] By Mr. Rosenthal:

Q. Before you were sworn you were asked a number of questions by Mr. Turkus and myself and other counsel.

A. Yes, sir.

Q. And you made a number of replies?

A. Yes, sir.

Q. Were the answers that you gave to the questions true?

A. Yes, sir.

Q. Now, up until the time, then, that you sat in the jury box that impression or opinion you had, your mind was set with respect to this case, existed?

A. Until I came into the court-room.

Mr. Turkus: In view of the record made by Mr. Cuff and Mr. Rosenthal with regard to a set opinion, the District Attorney does not oppose the challenge, but as a matter of fact, consents to it.

The Court: I take this view: If a man simply says he has formed an adverse impression from reading articles or newspaper reports, that logically leads to a conclusion which is prejudicial to a defendant, but it does not mean that a man is so stupid as to think that newspapers always tell the truth. But thereafter, when a man says that he is willing to serve as a juror and put aside, even though he cannot forget definitely, absolutely put aside that impression and decide the case on the merits and upon the evidence only, then he may qualify. But this man has gone further than that, I am afraid. I do not think it is safe to have him on the jury, and for that reason, in this particular case, I am sustaining the challenge.

[fol. 2354] (Annette Rich, No. 3080, and Wilbert Pagnod, No. 3118, called as talesmen.)

Mr. Turkus: Your Honor, with respect to the lady prospective juror in the case, counsel for both sides have indicated their admiration for ladies as jurors, but owing to the fact they will be locked up together, in order to safeguard their reputation we ask that she be excused.

The Court: As counsel have decided this, all the Court can do is to go along with them. It is based upon a sensible assumption. The lady is excused by consent of counsel.

Mr. Turkus: May that apply to all the ladies, so they will not be kept here unnecessarily?

The Court: Only if counsel agree on it right now.

Defense Counsel: Yes, we do.

The Court: The Court accepts that only because counsel agree and only upon the basis stated, in spite of the fact that the Court has found that in many cases wisdom has been used by a jury in the disposition of cases based upon the fact that ladies have been on the jury. The ladies may go.

(The clerk then announced that all ladies on the present panel were excused from further service.)

(Kennon T. Phillips, No. 3035, called as talesman.)

[fol. 2355] By Mr. Turkus:

Q. Mr. Pagnod, do you reside at 552 63rd Street, Bay Ridge?

A. Yes, sir, between 5th and 6th Avenues.

Q. You are listed as a soap manufacturer.

A. Yes, sir.

Q. Where do you manufacture?

A. No. 89 Warren Street, New York.

Q. Are you financially interested in that concern?

A. Yes, sir; quite so.

Q. Have you been engaged in the manufacture of soap for a number of years?

A. About thirty-five.

Q. How long have you lived in Bay Ridge?

A. About twenty-three years.

Q. Does your business, in the distribution of your product, or in any way—do you ship by rail?

A. Rail and boat.

Q. Do you have anything to do with truckers?

A. Yes, sir, expressmen.

Q. Does your business bring you in contact with any teamsters' union or trucking union officials?

A. No, sir.

Q. Do you operate your own trucks or hire them?

A. We hire them.

Q. Would it be somebody like United States Trucking Company?

A. The express would pick it up and take it to the car.

Q. Is there one particular man who is all the time on your side?

A. Yes, sir.

Q. So may I go along with the understanding you have no [fol. 2356] business or other contact with any union officials or any teamsters of said union?

A. We have deliveries coming in.

Q. Does that bring you in contact with union officials or outfits?

A. No, sir.

By the Court:

Q. What soap concern is it?

A. Pagnod Company.

Q. Where is the factory?

A. 89 Warren Street, New York City, between West Broadway and Greenwich Street.

By Mr. Turkus:

Q. For years you have been in the manufacturing of soap. Have you maintained your factory at 89 Warren street?

A. Yes, sir.

Q. Have you had some other location?

A. We were at 248 50th Street, Brooklyn, between 3rd and 2nd Avenues.

Q. How many years have you been in Manhattan?

A. About twenty years.

By the Court:

Q. Isn't that the Whitmore Building at 89 Warren Street?

A. I think it belongs to the bank, the Bank of Manhattan Trust Company.

Q. It is a very old building?

A. Yes, sir.

By Mr. Turkus:

Q. Does your business presently or in the past bring you in contact with anyone on the Brooklyn waterfront?

A. No, sir.

Q. Is the name of Albert Anastasio at all familiar to you?

A. No, sir.

By the Court:

[fol. 2357] Q. How far from 4th Avenue do you live?

A. I live between 5th and 6th on 53rd Street.

By Mr. Turkus:

Q. Is any portion of your business livelihood at all dependent upon the good will of any union officials?

A. No, sir.

Q. Are you depending, for the source of your supply of material upon the good will of any union officials?

A. No, sir.

Q. How many employees have you in your factory?

A. Five girls, a brother, and myself.

Q. Have you heretofore served as a juror in criminal cases?

A. No, sir; I was called but not served.

Q. Did you get as far as the jury box?

A. Yes, sir.

Q. Was there an examination similar to this?

A. Yes, sir.

Q. Was that recent?

A. In the Supreme Court.

Q. Were you excused by one side or the other?

A. Yes, sir.

Q. Were any lawyers in court present in that case?

A. No, sir.

Q. There are nine lawyers who represent three defendants. In mentioning the number of nine, I have no fault to find with the number of counsel; they can have as many as they want to to protect their rights in court; do you know any of these nine men who represent these three defendants or anyone connected with them?

A. No, sir.

Q. Is the name of Mr. William W. Kleinman familiar to you?

A. No, sir.

[fol. 2358] Q. Or David Price?

A. He was a counselor, I think he was in the Luckman case with Amen.

Q. You do not know him personally?

A. No, sir.

Q. Do you know anyone personally who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you know District Attorney O'Dwyer?

A. No, sir.

Q. Or any Assistant on his staff?

A. No, sir.

Q. With respect to capital punishment, have you any scruples conscientious or otherwise, against capital punishment?

A. No, sir.

Q. You understand when I speak of "capital" cases I speak of murder cases?

A. Yes, sir.

Q. Is there any reason why you cannot sit as a juror in this murder case?

A. No, sir.

Q. Do you understand the Judge will instruct you that the question of punishment must not enter into the deliberations of the jury in deciding the question of guilt or innocence—will you follow that instruction?

A. Yes, sir.

Q. May we go along with the understanding that you are in sympathy with law enforcement?

A. Yes, sir.

Q. Have you had any contact, in any shape, manner, or form, with people in Brownsville or the East New York area of Brooklyn?

A. No, sir.

Q. Or on the Brooklyn waterfront, or in the clothing or garment industry?

A. No, sir.

Q. Or in the clothing trucking industry?

A. No, sir.

[fol. 2359] Q. Do you know any of the Amalgamated Union officials?

A. No, sir.

Q. There will be certain instructions of law given by the Court in respect to a criminal case. Will you follow all those instructions conscientiously and apply them to this case?

A. Yes, sir.

Q. The Court will charge you on the presumption of innocence, the doctrine of reasonable doubt, the burden of proof and other matters which are mandatory for the Court to charge you on in criminal cases; is that clear?

A. Yes, sir.

Q. In other words, there are certain benefits that accrue to defendants who are charged with crime, legal benefits that the law of the land says a defendant must have. Will you give to the defendants every legal right the law says they should have, no more and no less?

A. Yes, sir.

Q. Part of the testimony in this case will emanate from accomplices. I take it you understand what I mean by "accomplice," without going into any long narrated discussion.

A. Yes, sir.

Q. Substantially, he is one who himself is a participant in the commission of the crime charged?

A. Yes, sir.

Q. The first inquiry I want to find out from you is your state of mind with respect to any possible bias or feeling or prejudice against the prosecutor of the county, Judge O'Dwyer, who, in order to solve a murder case, accepts the [fol. 2360] testimony of an accomplice and uses it against others who committed the crime. Have you any fault to find with the prosecutor for doing that, or have you any bias or prejudice against him for accepting such testimony?

A. No, sir.

Q. With respect to the prosecution of an indictment wherein the testimony of an accomplice is used, do you find any fault or have you any bias or prejudice against such prosecution?

A. No, sir.

Q. There will be legal tests that the Judge will give you that will apply to weighing the believability of that type of witnesses.

A. Yes, sir.

Q. In other words, an accomplice says he himself was one who was involved, and his testimony is subject to certain tests which the Judge will give you.

A. Yes, sir.

Q. Is it clear to you that the purpose of applying these tests the Judge gives you on the law as to accomplice witnesses is to ascertain, "Does that person speak the truth?"

A. Yes, sir.

Q. Is your frame of mind such that you understand that even a bad man can at times tell the truth?

A. Yes, sir.

Q. So that no matter who the accomplice is or what his criminal background may be or has been, what hopes he may have kindled in his own breast, the whole test is, Does he speak the truth about the crime participation, as a group, by these defendants, in the killing of the victim named in the indictment?

A. Yes, sir.

[fol. 2361] Q. If accepted, will you use your common sense and understanding to find out does that person speak the truth about this group or combination and the part that each one of them played in the commission of the murder?

A. Yes, sir.

Q. Do you understand in certain cases the prosecutors take certain safeguards with respect to witnesses they are going to use?

A. Yes, sir.

Q. In other words, will you weigh all of the evidence and everything that you hear in court, with common sense and understanding?

A. Yes, sir.

Q. Do not accept anything that any of counsel tell you in open statements in lieu of proof; don't accept anything the prosecutor tells you in lieu of proof. When I say to you that Judge O'Dwyer has broken the case from the inside, I must necessarily employ that language to find out your state of mind. You find out whether or not a case is broken from the inside when you get all of the proof in the case; do you understand?

A. Yes, sir.

Q. All I want to find out now is that you do not have some inherent bias or prejudice against the use of accomplice testimony as would cause you to reject it no matter what the circumstances were, because obviously if you did that you could not do justice to the People of the State.

A. Yes, sir.

Q. As to whether or not the District Attorney of the county sustains his burden of proof of establishing guilt [fol. 2362] beyond a reasonable doubt, you don't take my word for that; you listen to the testimony.

A. Yes, sir.

Q. In other words, do you understand that I am not here to find out whether you like a witness or you do not like an accomplice witness—that is not our purpose—our purpose

is to find out does he speak the truth about these men on trial.

A. Yes, sir.

By the Court:

Q. How long have you been in the soap business?

A. About thirty-five years I have been in it. My father was in it before.

Q. You make toilet soap?

A. Yes.

Q. You cater to the drug-store trade?

A. Retailers and wholesalers.

Q. How long have you lived in that section of Brooklyn?

A. About eight years in one house.

Q. Before that?

A. I lived on 58th Street between 7th and 8th Avenue.

Q. You always lived in the same section?

A. Yes, sir.

Q. Are you American born?

A. Yes, sir.

Q. I ask that because you gave a French pronunciation.

A. My father was French; my mother Irish.

Q. I see your first name is William. That is not French.

The Court: Go ahead.

By Mr. Turkus:

Q. In that case in the Supreme Court where Mr. Amen [fol. 2363] was the special prosecutor, were you excused for some knowledge of a particular defendant on trial, or was that some other case?

A. I was challenged by the defendant; I was satisfactory to Mr. Amen.

Q. I want to find out whether the excuse was one because of knowledge of a particular defendant. If it was I would have to find out the name of that defendant.

A. No, sir.

Q. It has been brought out here by one of the lawyers for the defendant Buchalter that his client has been convicted for other crimes, and I have got to go into this because I must find out your state of mind. Would you, because he is in jail for a long time, for other offenses that he has been convicted of and now being punished for, would that relax

your attitude toward The People of the State on this murder charge, because he is in prison for some other offense?

A. No, sir.

Q. Would you deviate from a proper, just result in this murder charge because he has been convicted of past offenses?

A. No, sir.

Q. In other words, will you, if accepted, decide the question of guilt here upon the evidence that you hear in court?

A. Yes, sir.

Q. When you mention the name of Mr. Amen, Mr. Joseph calls my attention to the fact that Mr. Todd was the special prosecutor for this Luckman case; it may have been Mr. Todd?

A. It was before Judge MacCrate.

[fol. 2364] Q. Then it was Mr. Amen, you were right.

A. It may have been one of them that hung over, I am not familiar; I think Judge MacCrate did handle the Amen special investigation.

Q. Is your frame of mind such that, in your inquiry for the truth, whether you like or dislike an accomplice in the case, if you are satisfied beyond a reasonable doubt that these three, as a group, participated in the murder of Rosen, whether you like or dislike the accomplices, that like or dislike is not to be reflected in your verdict—it is whether you believe what they say is the truth—do they speak the truth about the group or combination part that each one of these men played in the commission of the crime?

A. Yes, sir.

Q. In other words, if you are satisfied beyond a reasonable doubt as to the guilt of the three defendants, you do not release them because you do not like accomplices?

A. That is right.

Q. You will be charged, in words or substance—substantially the Judge may say to you that there can be no conviction upon the unsupported or uncorroborated testimony of an accomplice.

A. Yes, sir.

Q. And no matter how believable the man who participates in the commission of the crime is, no matter how much you believe his story, if the prosecution had nothing else, the Court would have to charge you to release the defendant.

A. Yes, sir.

[fol. 2365] Q. That is the law of our State.

A. Yes, sir.

Q. Should the Judge, when he charges you about corroboration, say the following, in words or substance, will you follow it, namely, the burden is upon the prosecution to corroborate the testimony of an accomplice, and is not to corroborate each and every item of the accomplice's testimony, but the corroboration may be deemed sufficient by the jury when it comes from an independent source, and by "independent source," it means a source other than accomplices.

A. Yes, sir.

Q. Which tends to connect the defendants with the commission of the crime, will you follow that instruction of law?

A. Yes, sir.

Q. Will you apply your experience to the facts in the case?

A. Yes, sir.

Q. With respect to the allocation of evidence, as I have explained to another juror who preceded you in the jury, the prosecutor does not prove his entire case through any single witness; it is through a series of witnesses that he establishes a case.

A. Yes, sir.

Q. One witness may testify as against one defendant, and another may implicate two, and three may be implicated all of the defendants. Rules will be given to you by the trial judge and the manner in which to apply the testimony as against the defendants. Will you use your common sense and understanding and where, subject to the rules, it [fol. 2366] hits one defendant, will you apply it against that defendant?

A. Yes, sir.

Q. And where, with common sense and understanding, the application of the rule hits all three, will you apply the testimony against the three?

A. Yes, sir.

Q. To sum it all up, if, at the end of this case, your mind is satisfied from the proof adduced in this court-room that in this court-room there are three of the group who killed the victim named in the indictment, and you are satisfied of that beyond a reasonable doubt, will you say so?

A. Yes, sir.

Q. Is there anything in your background, your present business connections, or anything, that I have not inquired about, which would prevent you from fearlessly and without hesitation rendering such a verdict if you are satisfied as to guilt beyond a reasonable doubt?

A. No, sir.

Q. And if you are satisfied beyond a reasonable doubt as to their guilt, will you say that in your verdict?

A. Yes, sir.

By Mr. Turkus:

Q. Mr. Phillips, were you a juror in one of those cases where I was prosecutor before?

A. No.

Q. At any rate, we did not meet as jurymen and prosecutor in one of the cases I tried for Judge O'Dwyer?

A. No, sir.

Q. You reside on Farragut Road?

A. Yes, sir.

Q. Is Farragut Road in Flatbush?

A. Vanderveer Park.

Q. That is quite a residential neighborhood?

A. Yes, sir.

[fol. 2367] Q. Have you lived there for a number of years?

A. Twenty.

Q. You are listed as a clerk for somebody.

A. The Guaranty Trust Company.

Q. At its New York office?

A. That is the main office.

Q. Are you a bank teller?

A. No, sir, I am a correspondent.

Q. Have you been with the bank for a number of years?

A. Yes, sir, for twenty-one years.

Q. I think I can go along with you very rapidly. I don't suppose that through any business contacts you come in close association with anyone in the garment district of Manhattan or the clothing center?

A. No, sir.

Q. Or in the clothing trucking?

A. No, sir.

Q. Do you know any union official of the Amalgamated Clothing Workers of America Union or any trucking union?

A. No, sir.

Q. Were any of the names I mentioned to the other prospective jurors at all familiar to you by way of business contact?

A. No, sir.

Q. Have you had any connection of any kind or description in the Brownsville or East New York areas?

A. No, sir.

Q. Have you heretofore served as a juror in criminal cases?

A. Yes, sir.

Q. Was that recent?

A. About three years ago.

Q. That was in 1939, you figure?

[fol. 2368] A. No, I think it was in 1940.

Q. Do you remember the judge?

A. O'Dwyer.

Q. That would be in 1939, Judge O'Dwyer took office as District Attorney January 1, 1940.

A. That would make it close, yes, sir.

Q. Did you receive the benefit of Judge O'Dwyer's instruction on the law in that case?

A. Yes, sir.

Q. Was that a capital case? I mean, was it a murder case?

A. No, sir.

Q. Were any lawyers in the court-room in that case?

A. No, sir.

Q. Do you know any of these nine lawyers representing the defendants at the bar?

A. No, sir.

Q. Or anyone connected with their offices?

A. No, sir.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you have any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. If accepted, will you exclude the question of punishment in deliberating in this case? That is what the Judge will tell you is your job.

A. Yes, sir.

Q. The same as the Judge, the same as the prosecutor, the same as the defense counsel, the jurors have a job to do

in the case, a job to do in consonance with their duty toward The People of the State and the defendants at the bar?

A. Yes, sir.

[fol. 2369] Q. The business of the jury is to do that job without fear, without favor, without sympathy, without prejudice?

A. Yes, sir.

Q. If accepted, will you render a verdict in consonance with justice in the case?

A. Yes, sir.

Q. I assume you are in sympathy with law enforcement?

A. Yes, sir.

Q. With respect to accomplice testimony, you heard me discuss with Mr. Pagnod and the other gentleman?

A. Yes, sir.

Q. Is there anything you would have said differently, if you had made the responses instead of Mr. Pagnod?

A. No, sir, nothing whatever.

Q. You have no prejudice or bias against the use of accomplice testimony?

A. No, sir.

Q. You will look the testimony over and find out if he speaks the truth about this group and combination and the part that each of these defendants played in the case?

A. Yes, sir.

Q. And you will apply the tests which will be given to you?

A. Yes, sir.

Q. No matter whether you like them or not, that is not the point, the point is does the accomplice speak the truth about them?

A. Yes, sir.

Q. With respect to corroboration, will you take the law from the Judge?

A. Yes, sir.

Q. In its every aspect, to constitute corroboration?

A. Yes, sir.

[fol. 2370] Q. Now, it may be—I don't say it will happen, but it may—that three of the lawyers may sum up—each lawyer has a right to sum up for each defendant—I have no fault to find with them, they are entitled to have every safeguard the law of the land gives them, certainly no less, and, of course, no more?

A. Yes, sir.

Q. You will give them all attention?

A. Yes, sir.

Q. The lawyers in arguing the case may or may not adhere, each with the other, on the same argument. For example, they may or may not agree with themselves that everybody in the case is an accomplice, and maybe they will not, I don't know—but just because you hear an argument three times, it will not have three times the force because you hear it repeated?

A. No, sir.

Q. I merely want to call that to your attention. You may hear certain arguments repeated, and properly so; each lawyer has a right to defend his client to the limit of the law of the land; with that nobody can find fault; so no matter what they say, if they repeat the arguments, I want you to bear in mind that it is still the same argument, no matter how many times you hear it?

A. Yes, sir.

Q. Do you feel the same as Mr. Pagnod does, upon the fact that the defendant Buchalter, having been convicted of another crime and presently serving a jail term, has no part to play in whether or not he is guilty or innocent of this charge?

[fol. 2371] A. Yes, sir.

Q. You will not relax or deviate from a proper result because he is paying the penalty for other offenses he has been convicted for?

A. No, sir.

Q. With respect to one statement that was called to the attention of the jury by one of the lawyers, and properly so, each defendant has to meet a single charge in this indictment, that is all they have to meet—what is charged in this indictment.

Q. By the same token, that is all the prosecutor can do; he can go no further. He can only establish the guilt on this indictment beyond a reasonable doubt. The law does not permit less or more.

A. Yes, sir.

Q. So the proof is limited to the charge in this indictment.

A. Yes, sir.

Q. And the prosecutor, by believable evidence, which he brings into this court of justice, must establish to your satisfaction beyond a reasonable doubt that these three men at the bar, Buchalter, Capone, and Weiss, are three of a

group that took part, collectively took part, in the murder of the victim named in the indictment, will you reflect that in your verdict?

A. Yes, sir.

Q. Will you say it without fear or hesitation?

A. Yes, sir.

By Mr. Talley:

Q. Have you formed any impression at all about this case [fol. 2372] or these defendants?

A. No, sir.

Q. Have you read anything about the case?

A. I have seen it in the paper.

Q. Has your attention, as you saw it, created any impression in your mind about these defendants or anyone connected with this case?

A. No, sir.

Q. Does that apply also to you, Mr. Pagnod?

A. Yes, sir.

Q. Did you read anything about the case?

A. Only the headlines.

Q. And did you read any articles in the *Mirror*?

A. I don't read the *Mirror*.

Q. Did you read any series of articles pertaining to these defendants in this case directly?

A. No, sir.

Q. So both of you gentlemen come into this court without any preconceived notion as to the guilt or innocence of these defendants?

A. Yes, sir.

Q. The Court will charge you that the burden of proof in this case, as in every criminal case, rests always with The People—the burden is on the District Attorney, representing The People, to prove the guilt of the defendants.

A. Yes, sir.

Q. And that there is a presumption of innocence under our law, a fundamental right to every man charged with crime?

A. Yes, sir.

Q. And that there is a presumption of innocence in favor of every defendant that comes into a criminal court?

A. Yes, sir.

[fol. 2373] Q. That is simply another way of saying, "The People must prove guilt." We do not have to come into

a criminal court because we are charged with a crime, and say, "We are innocent" and prove our innocence. That is not our type of administering justice. The law is The People must prove the guilt of everybody it charges with crime, whether by indictment or otherwise.

A. Yes, sir.

Q. My question to you is, Will you require the People to sustain that burden throughout this case?

A. Yes, sir.

Q. I can rely upon your doing that?

A. Yes, sir.

Q. Following that same theory of our law as to the presumption of innocence and the burden of proof, there follows the natural corollary that the defendant is not required to explain anything or testify to anything or to take the stand.

A. Yes, sir.

Q. That is one of the privileges of our law—not a privilege, but a right—and it is for the protection of innocent men rather than for the protection of guilty men?

A. Yes, sir.

Q. The Court will charge you that if these defendants or any of them choose not to take the stand, you, as jurors, are not to indulge in any unfavorable inference against them because of their failure to take the stand.

A. Yes, sir.

Q. And will you follow that proposition of law?

A. Yes, sir.

Q. And will you, Mr. Pagnod?

A. Yes, sir.

Q. Be guided in arriving at your verdict by those instructions as to the law?

A. Yes, sir.

Q. The District Attorney in one of his questions suggested that when an accomplice takes the stand, as they will in this case, that he may say, "Yes, I did commit this murder," or, "I did not engage in it—I did participate in it." If that type of witness takes the stand, you gentlemen of the jury are to determine whether they tell the truth or not?

A. Yes, sir.

Q. And that all the jurors are concerned with is to ascertain whether the accomplices are telling the truth about

these defendants. I say to you, gentlemen, that is not a correct statement of the law—that you are concerned, necessarily, with something more than that—much more than that. That is, you must ascertain, you must be satisfied that what these accomplices say about these defendants must be corroborated, supported, backed up, sustained by testimony that is entirely independent of their testimony. That the Court will charge you again as part of our American law.

A. Yes, sir.

Q. And the Court will further charge that unless that testimony of an accomplice is backed up and supported by testimony independent of what they say or what they say some defendant said to them, that you must acquit these defendants. The Court will charge you that in very plain, succinct language, as Judge Taylor charges juries. My question is to you two gentlemen, will you agree now to definitely follow that instruction of law, to require that additional, outside, supporting, corroborating evidence before you convict?

A. Yes, sir.

Q. The Court will charge you that unless you do find that evidence you must acquit. My question to you is, will you acquit without fear or reluctance these defendants under that instruction of law if this case is built up of testimony of accomplices and lacks in your opinion and judgment corroborating evidence that our American law requires; will you acquit them?

A. Yes, sir.

Q. The Court will charge you again that you are the sole judges of the facts in this case, the sole judges of the facts. You have no right to be influenced by what you think the Court thinks from the facts.

The Court: I will let you go to dinner now, gentlemen. Please do not discuss the case, let nobody talk to you about it, keep your minds open. Be back at two o'clock. In the meantime, everybody remain seated. The jury will go out first. The other members of the panel will now leave.

(After the jurors and talesmen leave the room:)

The Court: For the record, to complete it on this point: United States District Attorney Harold Kennedy called this morning during the court session in reference to an

apparent conflict in jurisdiction. The following are the conclusions of the Court from the assurance given:

There was apparently a misunderstanding by the United States Marshal concerning his instructions from Mr. [fol. 2376] Bennet. There is no disposition by the Federal authorities to interfere in the trial of this case, and with the discretion of the trial judge. The Federal authorities are concerned only in the matter of there being at all times adequate police guard while the prisoners are over here. That has been at all times provided and is being at all times provided, and the proper instructions in regard thereto were given some time ago by the Court to the captain of the court officers—concerning the police at all times—so the incident may be deemed closed.

Mr. Talley: Has this Court assumed the responsibility of seeing these men are properly fed? That important thing must not be overlooked, and apparently there has been some conflict with that.

The Court: I will take that up with you later. That is a detail the Court is not required to rule on now.

The defendants are remanded.

(A recess was then taken until 2:00 P. M.)

[fol. 2377] Afternoon Session—Trial Resumed

(All defendants represented by counsel.)

(The examination of Wilbert Pagnod and Kennon T. Phillips was resumed.)

By Mr. Talley:

Q. Mr. Pagnod, outside of anything that has been asked by the District Attorney or by myself, do you know of any reason why you cannot sit as a fair and impartial juror in the trial of this case?

A. No, sir.

Q. Mr. Phillips, do you know of any reason why you cannot sit as a fair and impartial juror?

A. No, sir.

Mr. Talley: I have no further questions.

By Mr. Climenko:

Q. Mr. Pagnod, I will address my questions to you first. Have you read about the case or any of the people in it at any time?

A. No, sir. I seen the heading, but I never noticed the reading.

Q. You never read any article about any of the defendants?

A. No, sir.

Q. And you never read any article about this case?

A. No, sir.

Q. Is that the same answer that you would make, Mr. Phillips?

A. Correct.

Q. Never read anything about any of the people in this case?

A. Just headlines.

[fol. 2378] Q. You understand this is a case to be tried in this court and that the consideration by the jury of it is wholly apart from any other thing that may be going on in New York at this time, do you understand that? In other words, the fact we have a political campaign going on at this moment is a matter which has no connection with the case, is that right?

A. Yes.

Q. And that the defendants and all of them are presumed to be innocent, you understand that?

A. Yes.

Q. And I take it that you understand also that the fact that one of the nominees for an elective office of the City of New York happens to be the District Attorney of Kings County is a factor which would not have any effect in your thinking about the case as jurors, were you selected; is that correct?

A. Yes.

Q. That is something which is entirely foreign to the case here that will be presented to the jury—correct?

A. Right.

Q. And it is something which you will not permit to enter into your minds or your consideration of the case were you selected as jurors, is that correct?

A. Yes.

Q. The fact that the Assistant District Attorney in questioning talesmen such as yourself about your capacities for fairness may have mentioned certain names, the mere fact that he has mentioned those names would not in and of itself affect your thinking about the case at all, would it?

A. No, sir.

Q. For instance, Mr. Turkus has asked for some weeks [fol. 2379] now all talesmen as they have taken the box whether they were acquainted with the name of a gentleman named Petofsky. Whether or not you are acquainted with him is not what I am interested in, and the mere fact that he has mentioned those names would not affect your consideration of this case, would it?

A. No, sir.

Q. Assuming there were no other reference to that particular name at any time in the future; is that correct? Or the fact that he has mentioned the names of officials of unions, if those names don't play any part in the proof of the case once we get to the point of actually swearing witnesses, the mere fact that he has mentioned names of officials or of a particular union, that would not affect your consideration of the case at all, would it?

A. —.

Q. That would merely have been the announcement by Mr. Turkus of the name of a union official prior to calling any particular witness, isn't that so?

A. Yes.

Q. And it would be something which would be dismissed by you jurors entirely from your consideration, is that so?

A. Yes.

Q. And so with respect to the name of a union lawyer by the name of McGuire—have you ever heard of that name?

A. No.

Q. Nor have you?

A. No, sir.

Q. Or with respect to the name of a lawyer called Louis Waldman, have you ever heard of him?

A. No, sir.

Q. The fact that those names may or may not have been mentioned in the past and they have no part in the trial of this case, that is a fact which has nothing to do with the [fol. 2380] merits here, is that so?

A. Yes.

Q. You have been asked something with respect to accomplice testimony, and I think that Mr. Turkus has tendered to you a definition of accomplices. Assuming that an accomplice should take the stand and offer testimony in this case, and assume that the Court should instruct you that the testimony of any accomplice is to be regarded with suspicion by you as jurors, would you have any difficulty in following that instruction?

A. No, sir.

Q. In other words, to strip that of its legal verbiage, if you were told that a man who takes the stand and says, "Yes, I participated in a particular crime," is a man whose word you must look into very carefully and with suspicion before you accept it, that that is one of the rules of law for the guidance of jurors, you would have no difficulty in following that instruction; is that so?

A. Yes.

Q. And if you found that the accomplice, in addition to being an accomplice, is a man who had the most urgent reasons to falsify, will you take that into consideration in determining whether or not he is telling the truth; is that so?

A. Yes.

Q. Mr. Phillips, that would be your response too, I take it?

A. Yes.

Q. So also if you find that the accomplice was a person who had a record of being unable to tell the truth or at least of having wilfully falsified in court before, you will take that into consideration in determining whether or not [fol. 2381] you could accept his word, is that so?

A. Yes.

Q. And as jurors you would scrutinize whatever was offered to you by way of testimony with at least the same degree of care that you would use in passing on the merits of a matter affecting your own interest, isn't that so?

A. Yes.

Q. Because, in any event, even though the Court will instruct you that punishment is not a matter for the jury to determine, you realize that this is what Mr. Turkus has called a capital case, and a matter of vast importance in the sense that it requires your honest, deliberate consideration; is that so?

A. That is right.

Q. And a matter involving as careful consideration, per-

haps, as anything that may ever come before you in your life; is that correct?

A. Yes.

Q. You realize also that the function of jurors is to pass on the facts and, in other words, it is the duty and the obligation of you and your fellow jurors to decide who is telling the truth and who is not, and you realize also that that is a function which you as jurors do not divide with anybody else. You and your fellow jurors are the only judges of the facts and in ascertaining what the facts are you work independently of anybody else in the court-room. It is your judgment, and nobody else's judgment can be a substitute for yours—you realize that?

A. Yes.

Q. And you realize also that each one of you is under an [fol. 2382] obligation to consult with your fellow jurors, but that you are each under an obligation to adhere to your individual opinion in the event that your fellows cannot persuade you by argument based on the evidence that they are right and you are wrong. You understand that?

A. Yes.

Q. So it is the obligation of the members of the jury, and the individual members of the jury, in the event that they are not so persuaded, to adhere to their own individual opinions; you understand that?

A. Yes.

Q. This is not such a situation as may confront, let us say, the members of a board of directors where it is required that perhaps some people give in to others.

Mr. Turkus: I object.

Mr. Clinenko: I have not finished my question.

Mr. Turkus (to talesmen): Will you refrain from answering, gentlemen?

Q. This is a situation in which you are under an obligation under your oath not to sacrifice or give up your own opinion unless it is done in consequence of reasonable argument, based on the evidence, advanced by fellow jurors. You understand that this is that type of situation?

Mr. Turkus: Objected to, the analogy between a board of directors. This is going into a purely legal proposition which the Court must charge.

The Court: Sustained.

[fol. 2383] Mr. Climenko: Exception.

Q. You do understand that you have an individual responsibility to pass on the facts and that that individual responsibility goes to the point of your maintaining your point of view unless you were convinced by the arguments of your fellows and unless those arguments are based on the evidence; is that correct?

A. Yes.

Q. Is there any reason why, in this particular case, which by intimation is one which has received a good deal of public attention in the press, at least,—is there any reason why you would have the slightest feeling of restraint in returning a verdict of Not Guilty if, after hearing all of the evidence and hearing the able counsel for the District Attorney, the Assistant District Attorney, you harbor a doubt, a reasonable doubt, about the guilt of the defendants or any one of them, would you be under any restraint about saying that you had such a reasonable doubt and saying it in the form of a verdict of Not Guilty?

A. No, sir.

Q. None whatsoever? You would not have any hesitation about doing that?

A. No, sir.

Q. You would not have any fear about doing that? Now, there has been reference to your obligation to The People of the State of New York. You understand, of course, do you not, that The People of the State of New York is a phrase by which is referred to all of us, the Court, the District Attorney, the defendant, the lawyers, and themselves. That makes up The People of the State of New [fol. 2384] York. You understand that?

A. Yes.

Q. And that your obligation to The People of the State of New York in that sense is your obligation intelligently and courageously to discharge your duty as jurors under your oath, is that so?

A. Yes.

Q. And that under that obligation, first you must give to the defendants the benefit of the doctrine of their presumption of innocence. You understand that?

A. Yes.

Q. You are also under the obligation to The People of the State of New York to say "Not Guilty" if you entertain

a doubt as to the guilt of the defendants or any one of them; do you understand that?

Mr. Turkus: That is bad law.

Mr. Climenko: Reasonable doubt, is what I meant.

The Court: Sustained.

Q. You understand that you are also under a duty to The People of the State of New York, in the event that you entertain a reasonable doubt about the guilt of the defendants or any one of them, to return a verdict of Not Guilty?

A. Yes, sir.

Q. That is your duty to The People of the State of New York, and neither one of you feel any hesitation about your intellectual courage to perform that duty if that is the decision which you come to; is that right?

A. Yes.

Mr. Climenko: Thank you.

By Mr. Fischbein:

[fol. 2385] Q. Mr. Pagnod, you realize that lawyers ask a lot of questions simply to get your present state of mind?

A. Yes.

Q. You know we have no quarrel with your answers, no matter what your answers may be, so long as we can finally determine what your state of mind may be. Then we are satisfied. Is there anything in your state of mind at the present time—

A. No.

Q. —which would in any way preclude you from being fair to The People of the State of New York and to the defendants on trial?

A. No, sir.

Q. You have heard Mr. Sidney Rosenthal refer to the fact that he together with his associates—I am one of Mr. Rosenthal's associates—represent the defense of Louis Capone. Do you feel that you would be able, under the instructions of the law as his Honor will tell you the law is in this case, to take just that portion of the testimony adduced in this court room which applies to the defendant Louis Capone, and consider that evidence separately and distinctly as though you were trying three distinct cases here?

A. Yes.

Q. You feel you can do that?

A. Yes.

Q. Of course, we are not kidding ourselves. We realize that this case together with other cases have received a great deal of publicity and that is why there were headlines as you have spoken about in the papers. I believe you have spoken about it too, Mr. Phillips,—certain headlines that you have seen in the newspapers. Because of that publicity [fol. 2386] we also appreciate the fact that sometimes defendants are on the unpopular side of the lawsuit, and this, in the strict sense, is a lawsuit where these defendants are brought forward to meet certain charges. Now, coming back to Mr. Turkus's statement: He made a statement to the effect that you won't accept the opening statement of counsel in lieu of testimony or in lieu of evidence. Do you remember that statement that Mr. Turkus made?

A. Yes.

Q. The law provides that The People of the State of New York by their representative, the lawyer that they have retained to represent them, must, by law, make an opening statement. Now all we have before us is an indictment, a short-form indictment, charging each of the defendants with participation or with actual shooting and killing of one Rosen in 1936. We don't have—you can appreciate that—that is the law—his Honor will tell you that that is the law—we don't have to say one word during the course of the entire trial, that the burden rests solely upon the prosecution and only with the prosecution to prove the guilt of the defendants beyond a reasonable doubt. If his Honor tells you that that is the law, whether you agree or disagree with the law, do you feel that you would accept it and apply it to the facts in this case?

A. Yes.

Q. In view of that, if that is the law—I am sure that I am not misquoting it, will you still feel, because of the [fol. 2387] statement made by Mr. Turkus on the voir dire, that do not accept the opening statement of counsel in lieu of testimony, do you feel that because of that statement you are expecting some sort of testimony coming from any one of these defendants or the defendant Louis Capone, whom I and my associates represent?

A. I don't get the question.

Q. I withdraw the question.

Mr. Turkus: That is a legal question.

Mr. Fischbein: I withdrawn the question. I will put it in this form:

Q. Because of the headlines that you have read and because of things that you may have heard or statements that you may have heard in the court-room, and also with respect to the statement that "Don't accept anything in lieu of testimony," do you feel at this time that you cannot serve as a fair juror unless the defendants or any one of them come forward with some sort of proof to satisfy you with respect to their innocence or with respect to the creation of a reasonable doubt?

Mr. Turkus: I object to it. That is a legal question.

The Court: Sustained.

Mr. Fischbein: Exception.

By the Court:

Q. Mr. Pagnod, if the Court should charge you that defendants don't have to prove anything, will you be able to lay aside anything that is in your head at the present time concerning the case and decide the case fairly upon the evidence?

A. Yes, sir.

Q. Without being influenced by anything that you have read or heard?

A. Yes, sir.

By Mr. Fischbein:

Q. Is your present state of mind such that you will not require any sort of proof coming from the defendants?

A. Yes.

Q. In other words, if the defendants do not offer any proof to rebut any testimony that is adduced by The People, do you feel that you can weigh the evidence solely upon what you have heard adduced on behalf of The People?

A. Yes, sir.

Q. You realize, do you not, Mr. Pagnod, that your commitment is to The People of the State of New York, that you give the defendants a fair and impartial trial?

A. Yes, sir.

Q. You realize that The People of the State of New York do not want a conviction no matter what the evidence is; you realize that?

Mr. Turkus: We do.

Mr. Fischbein: No matter what the evidence is. Except. I will supplement that with this statement:

Q. Except that if the proof is such that establishes in your mind and to your satisfaction beyond a reasonable doubt on the testimony and upon the evidence that you believe, that the defendants are guilty; in that case you will bring in a verdict of guilty, will you not?

A. Yes.

Q. But, on the other hand, you realize that The People of [fol. 2389] the State of New York demand from you that in the event you are not satisfied of the defendants' guilt beyond a reasonable doubt, they demand of you to acquit the defendants. Will you do that?

A. Yes, sir.

Q. You realize, do you not, and I speak to you, too, Mr. Phillips, that a reasonable doubt can arise from the character of the evidence or from the character of the person who supplies the testimony? You realize that? Or the lack of evidence sometimes creates a reasonable doubt. You appreciate that, can you not?

A. Yes.

Q. So that in the event we have certain individuals taking the stand who are produced here by the prosecution, will you say, after listening to them and after their cross-examination, after their direct examination, you say to yourself, "Well, I don't believe that man under oath," after hearing everything, you realize that that could create a reasonable doubt?

A. Yes.

Q. You realize—

Mr. Turkus: That is a bad instruction of law, Judge.

The Court: Sustained.

Mr. Fischbein: Exception.

Mr. Turkus: It will give the juror an improper impression of the law, possibly.

Q. You did say you will follow this instruction: That a reasonable doubt could exist from the lack of evidence or from the character of the person who gives the evidence? [fol. 2390] A. Yes.

Q. You realize that suspicious circumstances is not evidence?

A. Yes.

Q. Or do you realize loud talk in a court-room is not evidence?

A. Yes.

Q. It is just that portion of a person's testimony which you honestly and conscientiously can say, "I believe." That is the evidence in the case.

Mr. Turkus: I object to it. There is something there about loud talk that was ambiguous.

The Court: Sustained.

Q. The loud talk I am referring to—if you should find that either side, whether it is for the prosecution or the defense, if you should find either side, one on one side appealing to prejudice and one on the other side appealing to sympathy, you will disregard that, will you not?

A. Yes, sir.

Q. You won't let prejudice enter into your verdict?

A. No, sir.

Q. Or into your deliberations?

A. No.

Q. You realize that these defendants are entitled to twelve fair, impartial verdicts, based upon the evidence in this case and nothing else?

Mr. Turkus: That is bad law. There are not twelve verdicts in the case.

Mr. Fischbein: Twelve individual verdicts, I said.

[fol. 2391] Mr. Turkus: That is not the law.

The Court: A verdict based upon the decision of twelve individual minds.

Mr. Fischbein: That is right.

Q. Collectively it would make up your verdict?

A. Yes.

Q. We are entitled to twelve minds meeting upon common ground and coming to a conclusion based upon the evidence in this case. And the defendants are entitled to that individual opinion and verdict based upon the evidence.

A. Yes.

Q. Assuming, Mr. Juror, that other jurors voted contrary to the manner in which you voted, you won't change your ballot solely because others vote contrary to the manner in which you vote and because of force of numbers, because they outnumber you? That won't be a reason that you would give for changing your ballot?

A. No, sir.

Q. You would insist upon being persuaded by fair and reasonable argument?

A. Yes, sir.

Q. Before you change your opinion?

A. Yes, sir.

Q. Before you change your ballot or vote?

A. Yes, sir.

Q. Was there any impression created in your mind as the result of seeing police officers outside this court room?

A. No, sir.

Q. You feel that Mr. Capone could rely upon you and upon your word that if you are selected as a juror in this case you would consider the evidence in this case carefully [fol. 2392] and that you would render a verdict solely upon the evidence in this case?

A. Yes, sir.

Q. And that if you did not believe an accomplice who says he is an accomplice, a person who says, "I killed Joseph Rosen; I killed him on the 13th day of September, 1936," the fact that he says that he killed that person and then he goes on to recite a story that So-and-so and So-and-so participated in the murder with him, would you, solely because he implicates himself in that murder, accept that testimony as true?

A. No, sir.

Q. Merely because the prosecution offers a witness to you as a witness and because that witness is offered to you by the prosecution, would you start out with the assumption that that witness must be telling the truth?

A. No, sir.

Q. You would apply all the tests that you have heard recited here before accepting the testimony of anybody?

A. Yes, sir.

Q. You would find out whether he is interested?

A. Yes.

Q. Whether he has a motive for giving his testimony in this court room?

A. Yes.

Q. You would take into consideration the opportunities that witnesses had to speak together with respect to the facts in this case?

A. Yes.

Mr. Climenko: Your Honor, there are two additional questions which I would like to put, if I may.

By Mr. Climenko:

[fol. 2393] Q. Gentlemen, assuming that it should be testified to as a fact during the course of this trial that the defendant Louis Buchalter is presently under a sentence by reason of convictions for offenses having nothing to do with this case, for a period of imprisonment that runs somewhere from forty to seventy years, is that a fact which would prejudice you against Mr. Buchalter in the trial of this action?

Mr. Turkus: That is not properly worded. It has a right to prejudice a juror under certain circumstances. The question does not take them into account.

The Court: Sustained.

Q. Assuming that you should learn in the course of this trial that the defendant Louis Buchalter is already, and in connection with other offenses independent of this case and having nothing to do with it, under a sentence of imprisonment [fol. 2394] for a period of forty to seventy years, would that circumstance prejudice you against that defendant in the course of your deliberation?

Mr. Turkus: The question is still bad as to law.

The Court: Yes. Supposing the Court should charge you that upon the evidence that was adduced in the course of the trial there was nothing that justifies an inference of guilt or a prejudice because of the present conviction and sentence of such defendant and simply disregard it, would you follow the instruction of the Court?

Talesman Pagnod: Yes, sir.

The Court: Will you, Mr. Phillips?

Talesman Phillips: Yes, sir.

Q. Then those prior convictions would not affect your thinking about this case at all?

A. No, sir.

Mr. Turkus: I object to it and I ask it be stricken and the jurors told to disregard it.

The Court: Yes. There might be something come up which would make it relevant. The Court would have to charge on that at the proper time.

Mr. Climenko: Then I would like to rephrase the question, if your Honor pleases.

The Court: I don't think I would pursue it, if I were you.

[fol. 2395] Mr. Climenko: I adopt your Honor's suggestion.

The Court: It is very difficult to express without getting confused and confusing the jury.

Mr. Climenko: Very well, your Honor, I want to drop the subject then and ask about the other questions that I said I had in mind.

Q. Gentlemen, it is conceivable that in the course of the trial of this case you as members of the jury may in a sense be incarcerated for the duration of the case. Aside from the fact that that may prove to be a circumstance of some inconvenience, would it be a circumstance that you would permit in any sense to become the source of prejudice against the defendants?

Mr. Turkus: There is an objection to the use of the word "incarcerated." This jury will not be incarcerated.

Mr. Climenko: If your Honor pleases, I think everybody understood the sense in which I used it.

Mr. Turkus: I cannot help that. It is not said right.

The Court: I did not hear the question.

Mr. Climenko: May I withdraw the question?

The Court: Yes.

Q. Gentlemen, assume during the course of the trial of this case and under the Court's administration of the court, under the Judge's administration of the court, you were kept together as a group while the case is in progress until such time as you reach a verdict; would you permit that [fol. 2396] circumstance, if it should develop into becoming a circumstance, to become a source of any prejudice against the defendants or the source of any ill will or any ill feeling against the defendant or any one of them?

A. No. No.

The Court: Don't you think if the jury dislike the Court's ruling, it would take it out on the Judge, rather than on the defendants?

Mr. Climenko: I don't think anybody would do that.

The Court: It impresses me as being a somewhat superfluous question.

Mr. Climenko: Well, it may be, but it was one that presented itself to my mind.

Q. And then the last question that I wanted to address to both of you gentlemen, are you acquainted to any extent

of intimate friendship with any member of the Police Department of the City of New York?

A. (By No. 11) I have a cousin in The Bronx.

Q. Is he a patrolman?

A. Yes.

Q. Anyone else?

A. (By Mr. Phillips) Relationship, did you say?

Q. Do you entertain a feeling of intimate friendship?

A. I play poker with one now and then.

Q. Have you ever talked about the case with your police friend, this case?

A. Never.

Q. The fact that each of you, in turn, has as a friend a [fol. 2397] member of the staff, would that in any way color your thinking about the case?

A. No. No.

Q. Or instil in your mind, a prejudice against somebody or sympathy for somebody or feeling of partisanship with anybody, simply because police officers may testify?

A. No.

Q. It is a circumstance, you realize, which is entirely foreign to any issue in this case and that you must relegate outside of your mind; is that right?

A. Yes.

Mr. Barshay: No further questions.

Mr. Turkus: Mr. Pagnod is satisfactory to The People of the State of New York. Mr. Phillips is a peremptory.

Mr. Fischbein: Peremptory by the defense.

Mr. Barshay: All defendants join.

Mr. Cuff: All counsel join.

May Counsel address your Honor at the bench on a matter that we think may facilitate selection?

The Court: Is it necessary to do that now, or can it wait?

Mr. Cuff: It can wait, but I thought it better be done at this time.

The Court: Concerning one juror?

Mr. Cuff: Yes.

The Court: Let it wait for the present.

(The two following talesmen were called and took their places in the jury box: Harry Rosenblatt, of 36 Kenilworth [fol. 2398] Place, and Julius Baker, of 2110 Westbury Court.)

By Mr. Turkus:

Q. Mr. Rosenblatt, is Kenilworth Place Flatbush?

A. Yes.

Q. Have you lived in Flatbush for a number of years?

A. About twenty years.

Q. You are listed here as a special representative, without any further indication of what line of work you are in.

A. Standard Brands, food products.

Q. Who is the head of that here in Brooklyn? Have they a Brooklyn branch?

A. They have a Brooklyn agency, yes.

The Court: Sales?

Mr. Rosenblatt: Yes, sir.

Q. Who is the head of the company in the Brooklyn office?

A. The Brooklyn manager is Ranney.

By the Court:

Q. Is not Ed Schmidt the chief salesman?

A. Mr. T. L. Smith is the president.

Q. You are between Farragut and Glenwood?

A. Yes, sir.

Q. Do you belong to the South Midwood Residents Association?

A. No, sir.

Q. Any local association?

A. None at all.

[fol. 2399] By Mr. Turkus:

Q. (To Mr. Rosenblatt) Prior to your connection with Standard Brands, what line of business were you in?

A. Dress line.

Q. Manufacturer of dresses?

A. Selling for a manufacturer.

Q. You had an office in the garment district?

A. Yes, sir.

Q. Is the name of Lepke a familiar name to you?

A. It is.

Q. Gurrah?

A. Yes.

Q. Hyman Curly Holtz?

A. No.

Q. How many years were you in the dress business?

A. About six.

Q. And I take it then that would embrace up to about 1932?

A. Yes.

Q. You were there then when there was a general stoppage on truck deliveries?

A. I don't think so.

Q. Just got out prior to that?

A. I was out-of-town salesman. I do not know much that was going on in the city.

Q. You were six years in the garment district, but as the result of being there for six years, have you an impression about the name of Lepke or Gurrah?

A. Not from that industry.

Q. Have you some impression from some other?

A. Presently I have an impression.

Q. Does that impression go as far as an opinion?

A. No. I met the defendant about eight years ago.

Q. Which one?

A. Mr. Buchalter.

[fol. 2400] Q. In connection with business?

A. No, just casually; never saw him since.

Q. In the garment district?

A. No. My end of the business is catering to bakers.

Q. Then you know about flour truckmen?

A. Yes.

Q. The name of Max Silverman is familiar?

A. Yes.

Q. Wolfie Goldis?

A. Yes.

Q. And your livelihood is earned now in connection with Standard Brands?

A. Yes.

Q. That is the way you earn your livelihood? Without going into an extended voir dire, do you feel it would be more fitting that you be not a juror in the case?

Mr. Climenko: I object to the form of the question.

Mr. Turkus: The juror has pointed out ~~that~~ he met the defendant Lepke on an occasion; that through his present association with his employment he deals with bakers; that he knows the name of Wolfie Goldis, Max Silverman, the flour trucking; that he has been in the—

The Court: What was the question?

Mr. Turkus: The question is whether he feels it is not fitting for him to be a juror in the case.

The Court: Are you prejudiced?

The Talesman: No, sir.

Q. What firm did you represent, Mr. Rosenblatt?

A. In the dress business?

[fol. 2401] Q. Yes.

A. Kaylor, Jr. was the last.

Q. The circumstances that you met the man known as Lepke, were those social?

Mr. Climenko: If your Honor pleases, I object to that question upon the ground that the talesman, in referring to the incident, said that his name was Mr. Buchalter, and I know of no reason for the prosecutor at this point and in reference to that incident, to adopt that alleged alias.

The Court: It has already come in by common usage. Overruled.

Mr. Climenko: I except to the ruling, to your Honor's observation about common usage.

The Court: I have heard counsel for defense use it.

Mr. Climenko: I have not, your Honor.

The Court: I have.

Mr. Climenko: I except to your Honor's ruling, and I submit to your Honor that no counsel for defendants have used that name.

The Court: Take your exception.

Mr. Climenko: Exception.

Q. I take it, Mr. Rosenblatt, in the discussion you lost the question.

(Pending question read.)

A. Yes, in some extent. I happened to be at a place with some friends of mine. One person introduced me.

Q. Where was this place that you met? Was it a home?

A. No.

[fol. 2402] Q. Was it a social function?

A. No, a night club.

Q. Was this man in company with others when you met him, the man you call Buchalter?

A. He did not make that much impression.

By the Court:

Q. Not asking about impression. You met him in a night club. Did you drink with him?

A. No, sir.

Q. Did you eat with him?

A. No, sir.

Q. Members of the same party?

A. No, sir.

Q. To what extent did the meeting go?

A. Just was introduced to him and that was all.

Q. Just an introduction?

A. That was all.

Q. Six years ago?

A. No, about eight years ago.

Q. And for eight years you remember a simple introduction?

A. It is my business, sir, to remember those things.

Q. Everybody you meet?

A. Most everybody.

Q. Wasn't there something more than a single introduction?

A. No, sir.

The Court: Is there a challenge here?

Mr. Turkus: Implied bias.

The Court: Try it.

(HARRY ROSENBLATT, of 36 Kenilworth Place, was duly sworn.)

By Mr. Turkus:

Q. Mr. Rosenblatt, when you were seated in Chair 11, you very frankly told the prosecutor that you had met the defendant Buchalter in a night club; is that correct?

A. Yes.

Q. And that you were introduced to him there?

A. Yes.

Q. That was at a time when you were associated with merchants who dealt with flour, isn't that right?

A. That is true.

Q. Were you introduced to him by people in the flour trucking business?

A. No, sir.

Q. People in your line of business?

A. In the baking business.

Q. You are familiar with the names of Wolfie Goldis—

A. I am.

Q. —Max Silverman?

A. I am.

Q. And that familiarity comes through baking trucking unions, that is, flour truckmen unions?

A. Yes.

Q. You have an impression about the name of Lepke?

Mr. Rosenthal: Object to it. He said he had none.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. Didn't you tell me you had an impression about the name of Lepke?

A. No.

Q. Do you associate the name of Lepke with Buchalter?

A. Yes.

Q. You are familiar with the name Gurrah?

A. Yes.

Q. You earn your livelihood by dealing with people who buy flour?

A. I do.

Q. That is one of your commodities?

A. I do.

Mr. Turkus: Challenge for implied bias.

[fol. 2404] The Court: Any questions?

Mr. Rosenthal: No questions.

The Court: Sustained.

Mr. Cuff: Exception.

Mr. Climenko: Exception, if your Honor pleases.

By Mr. Turkus:

Q. Mr. Baker, are you related to a Mr. Baker who is connected with the Brooklyn Bar Association?

A. No.

Q. 2110 Westbury Court, is that Flatbush?

A. Right.

Q. You are listed as being in the millinery business.

A. Yes.

Q. Has that been your occupational endeavor all your adult life, or have you been in other business?

A. The last thirteen years.

Q. Where do you maintain your place of business?

A. Flatbush Avenue.

Q. Is your place of business next to Mr. Beldor, the jeweler?

A. It is within that vicinity.

Q. You are on the block between Church Avenue and Albemarle Road?

A. Parkside and Westbury Court.

Q. Is that a retail establishment where you sell ladies' hats?

A. That is right.

Q. Are you in business for yourself?

A. Yes.

Q. What business were you in before that?

A. An accountant.

Q. Did you have any connections of any kind, nature, or [fel. 2405] description, or do you have any now, with anybody in the garment or clothing districts in Manhattan?

A. No, sir.

Q. Or with clothing truckers?

A. No, sir.

Q. When you were an accountant did you have an office in Manhattan?

A. No, I was a free lance.

Q. What was the name of the firm that employed you?

A. Touche Niven & Company.

Q. Where was their office?

A. 42 Broadway.

Q. Do you know whether they had any accounts in the garment district in Manhattan, clothing trucking?

A. No, sir.

By the Court:

Q. What was the name of the concern?

A. Touche Niven, an English concern.

By Mr. Turkus:

Q. And other than the time that you lived in the Flatbush section of Brooklyn where did you live?

A. Previous to that I lived on Schenectady Avenue.

Q. That is in the Brownsville-East New York section, isn't it?

A. Right off East New York Avenue.

Q. How many years did you live there?

A. Two years.

Q. Do you have any friends who live in that Brownsville-East New York area now?

A. No, sir.

Q. Do you maintain any contacts there?

A. No, sir.

Q. Are all your accounts local accounts now of the Flatbush Avenue business?

A. They come from all over.

[fol. 2406] By the Court:

Q. Where is your millinery business?

A. On Flatbush Avenue between Parkside and Westbury Court. It is directly opposite Winthrop Street.

By Mr. Turkus:

Q. While you lived in the Brownsville-East New York area of Brooklyn, did you become familiar with any of the names that were here mentioned?

A. No, sir.

Q. Have you ever heard the name of Lepke?

A. I heard it.

Q. The name of Gurrah?

A. I read it.

Q. The name of Martin (Bugsy) Goldstein?

A. I read that.

Q. Pittsburgh Phil Strauss?

A. I read that.

Q. What papers do you customarily read?

A. New York *Sun*.

Q. Any morning paper?

A. Not particularly. Sometimes the *Times*.

By the Court:

Q. What is the name of your Millinery business?

A. May Millinery Shop.

Q. Is that near the Patio Theatre?

A. About two blocks.

By Mr. Turkus:

Q. Did you ever hear any of those names discussed by anyone?

A. No, sir.

Q. The reading, how recent was that?

A. What is that?

Q. How recent was it that you read of these names?

A. I probably read it a week ago, that there was a trial on, had been a trial.

[fol. 2407] Q. Had you done any reading prior to that?

A. Yes.

Q. Was that in connection with Judge O'Dwyer's investigations in Brooklyn?

A. I have read about his investigation.

Q. And in that reading matter, did you read of any of the names of these defendants?

A. Yes.

Q. As the result of anything that you have read, have you any impression in your mind?

A. No, sir.

Q. And so, as you sit in the jury box, your mind is free from impression regarding these defendants?

A. Yes, sir.

Q. Since you received your jury notice, did anybody speak to you about the merits of the case?

A. No, sir.

Q. Have you any scruple, conscientious or otherwise, about capital punishment?

A. None.

Q. Have you served as a juror heretofore in any criminal case?

A. Yes, sir.

Q. In this court?

A. Yes.

Q. How long ago was that?

A. I think I served about two years ago before Judge Fitzgerald.

Q. Were any of the lawyers for the defendants in the court-room now in that case?

A. I think Mr. Fischbein was one of the attorneys.

Q. Do you remember who the Assistant District Attorney was?

A. McGuire? McCarthy?

Q. Do you know whether or not it was an indictment that was presented by Judge O'Dwyer?

A. I do not know.

[fol. 2408] Q. Could the lawyer have been Mr. McGough?

A. That is it.

Q. Did that case go to a conclusion?

A. It went to the jury.

Q. Is that the only experience you have had as a juror?

A. No, sir.

Q. Have you had other experience in a criminal case?

A. Yes.

Q. In the County Court?

A. County Court.

Q. How long ago was that?

A. I should judge about four or five years ago.

Q. Do you remember the name of the judge?

A. Judge Nova.

Q. And were any of the lawyers in this case associated with the defense of the case in which you sat as a juror?

A. I don't think so.

Q. There are nine lawyers here representing these three defendants. Representing the defendant Weiss we have a former judge of the Court of General Sessions in Manhattan, Judge Talley, and a former Assistant District Attorney of Brooklyn, James I. Cuff, and former Assistant United States Attorney. Do you know any of those three lawyers?

A. No, sir.

Q. Anyone connected in their law offices?

A. No, sir.

Q. With respect to the defendant Buchalter, we have here a former Assistant District Attorney from Brooklyn, Mr. Barsbay. Do you know him?

A. I only know him from being called on a panel about four months ago.

[fol. 2409] Q. Was that a case that was being prosecuted by Mr. Rooney?

A. I do not know who was prosecuting it, but Mr. Fischbein and Mr. Barsbay were defending three prisoners.

Q. In addition to Mr. Barsbay, we have a former Assistant United States Attorney, Wegman, representing the defendant Buchalter. Do you know him?

A. No, sir.

Q. Or his partner, Mr. Jesse Climenko?

A. No, sir.

Q. With respect to Mr. Capone, we have Mr. Rosenthal, Mr. Fischbein, and Mr. Rosenberg as his counsel. Do you know them?

A. No, sir.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. As you are sitting in the jury box, is your mind free and open to receive evidence in the case?

A. Yes, sir.

Q. Have you heard the other discussions that we have had with prospective jurors in regard to the testimony which emanates from an accomplice?

A. I did.

Q. Do you have any fault to find with the prosecutor who breaks a case from the inside, solves a murder by the use of accomplice testimony?

Mr. Talley: Object to the question.

The Court: Overruled.

Mr. Talley: Exception.

Q. Do you find any fault with the employment or the use of accomplice testimony in a prosecution?

A. No, sir.

[fol. 2410] Q. I take it, Mr. Baker, you understand as I go along that anything that I say by way of questioning on the voir dire is not to be accepted as proof in the case in lieu of testimony; do you understand that? That goes too with all the speculations that defense counsel may imply in connection with what the proof will be in this case. Do you understand that?

A. Yes.

Q. Do you understand an accomplice is one who participated in the commission of the crime?

A. Yes.

Q. Will you follow the Judge's instruction of law with regard to the tests that you apply to accomplice testimony?

A. Yes, sir.

Q. In any of the cases in which you sat as a juror before was there accomplice testimony?

A. No, sir.

Q. Would you have any difficulty in following the instruction of law that there can be no conviction upon the unsupported testimony of an accomplice?

A. Yes.

Q. I think you meant by that no. Would you have any difficulty in following the Judge's instruction of law that

there can be no verdict of guilt predicated upon the unsupported testimony of an accomplice? You will follow that?

A. Yes.

Q. Should the Judge tell you in words or substance that when you come to corroboration the jury cannot expect the prosecutor to establish, by independent proof, corroboration of every detail of the accomplice's testimony, will you [fol. 2411] follow that?

A. Yes.

Q. And if the Judge tells you that independent evidence, if believed by the jury, may be deemed to be sufficient support or sufficient corroboration of an accomplice if it tends to connect the defendants with the commission of the crime, will you accept that definition of law?

A. Yes.

Q. Will you endeavor to apply it to the facts in this case?

A. Yes.

Q. Since an accomplice is one who himself was engaged in the commission of the crime charged in the indictment, there is something right there that is against him, a black mark that can be used against him in weighing his believability. Do you appreciate that?

A. Yes.

Q. There may be other factors that may be brought out as tests to find out is the accomplice telling the truth. Will you bear in mind that no matter what tests you apply to the accomplice, whether it be if he has a motive or whether it be if he has a criminal background, or no matter what the test is that you apply to him, the common sense application of the test rule is, Does this accomplice tell the truth about them and their participation as a group in the commission of this murder? Do you follow that?

A. Yes.

Q. And if accepted as a juror, will you apply your talents and find that out?

A. Yes, sir.

Q. Now, as I have told you, since there can be no conviction [fol. 2412] upon the unsupported testimony of an accomplice, even if you believe the accomplice you have got to look for more, that there be that evidence which tends to connect the defendants with the commission of the crime; do you understand me as we go along?

A. Yes.

Q. It may be after you hear an accomplice testify you may not like him; as a matter of fact, you may dislike him—I do not know what your feeling may be about the individual—but will you bear in mind that the question is not whether we like or dislike the individual who comes here, the thing is, does he speak the truth about their guilty participation as a combination in the killing of the victim in the indictment. Do you follow that?

A. Yes, sir.

Q. And will that be the way you will devote your mental faculties in this case?

A. Yes.

Q. For example, you may be satisfied as to the guilt of these defendants beyond a reasonable doubt, the three of them as a combination, and their participation in this crime, you may be satisfied of that beyond a reasonable doubt, yet you may not like the accomplice, you may be angry with him, I may not know what your feeling is about it, but do you understand if you find these men guilty of murder in the first degree because of their combination participation in the crime, and you are satisfied of that beyond a reasonable doubt, whether you like or dislike the accomplice, whether [fol. 2413] he gets the kind of punishment that you think he ought to get or he does not, the test is, Are you satisfied beyond a reasonable doubt as to their guilt? Do you follow me on that?

A. Yes.

Q. In other words, you do not release three men whom you find guilty because you do not like the accomplice or you cannot punish him.

Mr. Barshay: I object to that question, especially that part of it which says, "because you cannot punish an accomplice."

The Court: Sustained.

Q. At any rate, if you find three guilty men at the bar of justice, if you find that beyond a reasonable doubt, you don't release them or find them not guilty because you do not like the accomplice; do you understand that?

A. Yes.

Q. Do you have any scruple, conscientious or otherwise, about capital punishment?

A. No.

Q. It has been brought out by one of the lawyers for the defendant Buchalter that he has been convicted of other crimes, serving a very long jail sentence, a number of years he has mentioned, I believe forty to seventy years, some such figure. Would you relax your duty as a juror to The People of the State of New York in this case because of conviction for other offenses and present incarceration, as penalty for those offenses?

A. No.

Q. Or would you deviate from a proper result in the case?

A. No.

[fol. 2414] Q. It has been brought out by one of the lawyers—it applies to all the defendants—it applies with equal force to the prosecution—that there is an indictment here setting forth a specific charge, that that is the charge the defendants meet, and, by the same token, that is the burden of the District Attorney, to establish guilt on that charge and that charge alone. Do you follow that?

A. Yes, sir.

Q. The District Attorney cannot go beyond that, cannot establish things not in the indictment, nor can he establish less than the indictment. His obligation is to establish the charge in the specific indictment beyond a reasonable doubt. Do you follow me on that?

A. Yes.

Q. It has been pointed out by another one of the lawyers for the defendant Buchalter that character does not become an issue in the case until and unless the defendant puts character in issue. That is the legal way of saying it. There is nothing complicated about it. The District Attorney cannot go into any defendant's character unless the defendant himself puts witnesses on the stand who purport to say he has got a good character, and if they do that, then the District Attorney can bring his witnesses about that defendant's character; otherwise the District Attorney can offer no evidence as to the bad character of a defendant. Do you understand that?

A. Yes.

Q. If accepted as a juror in this case, will you reason [fol. 2415] and use common sense?

A. Yes, sir.

Q. We are here now to decide under the laws of evidence as given to you by the Judge, has there been established in this court of justice the guilt of these defendants beyond

a reasonable doubt on this murder charge, and if accepted will you devote every one of your mental faculties to find out have they been established guilty beyond a reasonable doubt or are they innocent?

A. Yes.

Q. Nobody expects any juror to be a rubber stamp or to substitute opinions of somebody else for his own. You have got a mind, and I take it if accepted as a juror you will use it; is that correct?

A. Yes.

Q. By the same token, we do not want to get anybody on the jury who will obstinately or arbitrarily prevent a verdict from coming about because he is opinionated. I do not mean to be offensive or embarrassing to anybody when I say it, but I want to know will you sit down and reason the thing out with common sense and understanding with the other jurors in the case?

A. Yes.

Q. And if I establish, that is, The People of the State of New York, either through Judge O'Dwyer or any Assistant he has got in the court-room, satisfies you from the evidence in the case that these three men are three of the killers of Rosen, and you are satisfied of that beyond a reasonable doubt, will you say it in your verdict?

A. Yes, sir.

[fol. 2416] Q. Is there anything in your past life or in your present business connections, any way in which you earn your livelihood now or have in the past, which would make you hesitant in finding such a verdict?

A. No, sir.

Q. Or afraid to do so?

A. No, sir.

By Mr. Barshay:

Q. Mr. Baker, from anything you read, from anything you heard, from anything you have seen, is there somewhere in the back of your head an impression adverse to any of the defendants?

A. No.

Q. Do they start off at scratch with you?

A. Yes.

Q. Are you actively engaged in any political organization?

A. Last Sunday night, Parkside Democratic Club, I became a member—I met——

Q. Before that you—(inaudible).

Q. Did you talk to him in any wise?

A. No, sir.

Mr. Turkus: Please the Court, to save time I am going to exercise a peremptory challenge.

(The following talesmen were called and took their places in the jury box: Roland M. Robert, of 106 Columbia Heights; Harry Marcus of 23 Brighton 8th Place.)

By Mr. Turkus:

Q. Mr. Robert, you live at 106 Columbia Heights?

A. At present 97 Columbia Heights.

Q. That is the downtown Heights section of Brooklyn. [fol. 2417] Have you lived there for a number of years?

A. In the section, yes, about six years.

Q. What is your business?

A. Life insurance.

Q. Are you in business for yourself, Mr. Robert?

A. No, I am with the New York Life Insurance Company.

Q. Is your work inside, or is it outside work?

A. Inside.

Q. And how many years have you been employed by the insurance company?

A. Eleven years.

By the Court:

Q. Main office?

A. Yes.

By Mr. Turkus:

Q. Is that at 346 Broadway, Manhattan?

A. That is at 51 Madison Avenue.

Q. I think I can go through some of these questions with rapidity with you, Mr. Robert. In your past business experience or presently do you have any contact with anyone engaged in the manufacture of clothing, be it men's or women's?

A. No, sir.

Q. Or with the trucking of clothing?

A. No, sir.

Q. Are you familiar with the names of any union officials in the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Do you know any officials of any clothing trucking union?

A. No, sir.

Q. Or any teamsters' union?

A. No.

Q. Do you have any contacts by way of business or otherwise in the Brownsville-East New York area of Brooklyn?

A. No, sir.

[fol. 2418] By the Court:

Q. How old a man are you, Mr. Robert?

A. Thirty-four.

Q. And what is the nature of the work you do with the New York Life?

A. I am in the disability benefits division, handling claims for disability benefits.

Q. You make the settlements?

A. We handle all the correspondence and make the investigations, and the medical examinations.

Q. Do you yourself do the investigating, or do you just do the clerical work?

A. No, sir, clerical work.

Q. Before you went with the New York Life where were you employed?

A. I was a student before that.

Q. What line?

A. Student at college.

Q. What line of studying?

A. A.B. degree.

Q. I thought you said you were thirty-four years old. How old did you say you were?

A. Thirty-four.

Q. Then you were studying for the A.B. degree up to the age of twenty-eight?

A. No, until twenty-two.

Q. In those six intervening years were you occupied?

A. I have been with the New York Life for eleven years.

Q. Then from the time you were twenty-five you have been with the New York Life?

A. No, since I was twenty-three.

Q. What college did you go to?

A. Amherst College.

Q. Are you a married man or single?

A. Single.

Q. Live with your family or alone?

[fol. 2419] A. Alone, with a room mate.

Q. Are you a native of Brooklyn?

A. No, sir.

Q. Where do you come from?

A. Massachusetts.

Q. Whereabouts?

A. Holyoke.

Q. And how long have you lived in Brooklyn?

A. Six years.

Q. And always on Columbia Heights?

A. Yes.

Q. Being a single man living on Columbia Heights, I assume you belong to some association where you go and meet people and become occupied off hours?

A. No, sir, I don't.

Q. No men's clubs?

A. No, sir.

Q. Not even the Presbyterian Church down on the Heights?

A. No, sir.

Q. You just sit in your room and go to movies?

A. A little more than that.

By Mr. Turkus:

Q. Is there anything about the names of any of these unions that I have spoken of with the other prospective jurors, anything with clothing or garments or Brownsville-East New York that I should know?

A. No, sir.

Q. I take it, sir, that you have no scruple, conscientious or otherwise, about capital punishment?

A. No, sir.

Q. It has been brought out by one of the lawyers that Buchalter has been convicted of other crimes and he has got a long jail term to serve because of those offenses that he has been convicted for. What I want to know is this: [fol. 2420] Would you be inclined to relax any idea that you have about capital punishment or relax your duty as a juror in this case because of his present incarceration?

A. No, sir.

Q. Would you permit that present incarceration to cause you to deviate from a proper result?

A. No, sir.

Q. Are you in sympathy with law enforcement?

A. Yes, sir.

By the Court:

Q. Have you pursued any line of study since leaving college?

A. Only in connection with life insurance.

Q. Have you taken any course in the N. Y. U. or elsewhere?

A. I have taken course with the Life Management Association.

Mr. Turkus: Your Honor, it may be necessary to take a recess at this time.

Mr. Rosenthal: May I address the Court?

Mr. Turkus: It is important that it be done.

The Court: We will have to take a recess for fifteen minutes. First the defendants are remanded. The jury may retire to their room. Kindly do not discuss the case, gentlemen. All other talesmen may go until a quarter of four.

(A fifteen-minute recess was thereupon taken.)

(All talesmen were excluded from the court-room.)

HAROLD EDWARD SPILLE, attached to the Long Island College Hospital, Brooklyn, New York, being duly sworn, testified as follows:

By the Court:

Q. Are you the ambulance surgeon for the Long Island College Hospital?

A. Yes, sir.

Q. And pursuant to a call sent about a half an hour ago, did you come with the ambulance and did you in this building, in the medical room, examine the defendant Capone?

A. Yes, sir.

Q. Did you find him, upon such examination, to be normal or abnormal?

A. Normal.

Q. Did you find anything the matter with him?

A. No, sir. He had a mild hypertension, which would be not unusual for his age.

Q. That is a chronic condition?

A. Apparently, yes, sir.

Q. By "hypertension," you mean a mild arteriosclerosis?

A. Not necessarily.

Q. What do you mean?

A. Just that his systolic blood pressure seemed a little elevated.

[fol. 2422] Q. And is that reasonable for a person of his age?

A. Perfectly reasonable.

Q. Did you find him to be suffering from an angina attack?

A. Not at the time I saw him.

Q. Did you find any evidence observable that he had recently or immediately before you arrived been suffering from one?

A. There was no way that I could tell whether he had had one now or three days before.

Q. A few minutes before?

A. There was no evidence.

The Court: The Court will read from a communication from the Department of Correction dated October 12, 1941, re Louis Capone, addressed to the judge of this court, the following:

"Kindly be advised that we are still carrying out the same routine treatment in a modified form. Since the public press has seen fit to criticize the Tombs medical staff unkindly, unmercifully, and unjustly, the Acting Commissioner of Correction, Honorable Peter F. Amaroso, M. D., has ordered that the inmate be examined by a Tombs physician each morning before leaving for court, and that if the inmate needs medication, the physician is to administer it in person and said medication is to be swallowed in the presence of the physician; that the inmate is to receive no medication to take with him, and that we will resume the responsibility upon his return from court. This order [fol. 2423] went into effect October 10, 1941. Therefore, should any

pills of whatever kind he found on the person of Louis Capone while in court, these pills were not given by the Tombs physician, but were obtained through other channels.

"Respectfully yours, "Andrew J. Torre, M. D., "Acting Chief, Medical Staff."

This is on the City Prison, Manhattan, letterhead of the Department of Correction.

Following receipt of this communication the Court phoned Dr. Torre to come over here, and during yesterday morning's session Dr. Torre sat on the bench and conference was held between him and me. I told him that I wanted him to request the Commissioner to modify the order so as to permit the defendant to be supplied each day, upon leaving for court, with sufficient medication for that day, to cover the contingency of a possible angina attack, that I regarded the order as too stringent, as it would leave the defendant, in event of an angina attack, without any discretionary medication.

Today, when the defendant appeared, he gave outward appearance of being ill and was led from the court-room. Dr. Nash's office was notified, but he was out, and immediately an ambulance was summoned from the Long Island [fol. 2424] College Hospital. The doctor on the stand made the examination.

The report from Dr. Nash concerning the quantity of drug found on the person of Capone when he was examined several days ago contains the following—this was October 10th, last Friday—

"He produced two cardboard boxes used in dispensing medicines, one labeled 'Nitroglycerin' and one without identification label, which Capone told me were one-half grain tablets of luminal. Each carton contained about twenty tablets. He, Capone, informed me that these tablets were given to him by Dr. Torre, Prison Physician, at the jail. In a phone conversation on Saturday, October 11, 1941, Dr. Torre informed me that he prescribed only the daily requirement necessary, which, in his opinion, was one or two of each tablet daily, that he must have accumulated the daily allowance if those in his possession were what has been prescribed at the Tombs. This leaves the inference open as to whether the excess quantity was obtained from outside source.

I think it is already on the record that during night session of last week when, following a request by defendants' counsel for an adjournment, this defendant requested water for the purpose of taking medicine, he was seen to take two tablets of the luminal. Half an hour later he [fol. 2425] developed symptoms which the Court, of course, was not competent to diagnose. Upon going up to the cell, to the pen, he took a nitroglycerin tablet. He apparently did not require or receive, nor did he request, any medical treatment on that occasion, and was transported back to the Tombs without any trouble at all, and apparently he had no trouble in walking upstairs to the mezzanine and walking all the way across the building to the pen that night, which would seem to the lay mind to be inconsistent with an angina attack.

The information orally given by Dr. Nash is that these luminal tablets are double-dose tablets, that is, the ordinary dose for the individual is one-quarter of a grain; enough for two tablets would be a quadruple dose and would account for that condition.

The Court is now writing a letter to Dr. Torre, so as to make a record of it, requesting that the oral instruction given to Dr. Torre yesterday when he was in court shall be followed so that the defendant Capone will be provided hereafter, if the Department permits it, with a discretionary dose of his required medication, to be taken to meet the needs of any real or imagined angina attack.

Mr. Rosenthal: I would like the privilege of asking the doctor a question, with your Honor's permission.

[fol. 2426] The Court: You have the permission.

By Mr. Rosenthal:

Q. Is it true, Doctor, that with an angina attack, that if you come a number of minutes later it would be impossible for you to determine it?

A. It depends on the length of time that you arrive.

Q. And is it true also that an angina attack can be fatal?

A. It is a hard question to answer.

Q. Let me ask you this, Doctor, and this is without any discourtesy to you. —

The Court: The Court will take judicial notice that it is a common cause of death. The doctor was here about fifteen or twenty minutes after the recess.

Q. Have you had any experience, Doctor, at all, with angina attacks?

A. I have seen a few cases.

Q. You are not admitted yet? You are in training, is that it?

A. That is right.

Mr. Rosenthal: That is all.

The Court: Thank you, Doctor. Call back the jury.

Until and unless the Department of Correction permits a discretionary quantity to be carried each day upon leaving the Tombs prison, the Court will be prepared to summon the ambulance in any event of real or imaginary or feigned attack.

Mr. Rosenthal: Might I ask this, then, in view of what [fol. 2427] has occurred—I am not looking for any delay—if we adjourn now it will give me an opportunity to communicate with the Commissioner before they leave, so as to try to rectify this condition before the court session tomorrow, so that the condition then would be remedied rather than have a recurrence. I am not a physician, but as the defendant appears to me, he does not appear—and as I say, I say this only as a layman—to be in a physical condition to proceed at this time. It is now close to half past four, and by five o'clock these offices will be closed.

The Court: Dr. Nash is on his way down. Dr. Nash will have the required medication, and will sit here in court and administer it in event of any attack. The Court will resume.

In view of the history of the case, the Court does not feel justified in granting your request.

Mr. Rosenthal: I only did it for expediency. It does not make any difference to me. I can stay here all night.

Mr. Barshay: May we have some idea how late we work today?

The Court: You made no progress today.

Mr. Cuff: Couldn't you tell us how late we will be?

[fol. 2428] The Court: See what progress we make. The Court is kind hearted when the occasion justifies it.

Mr. Cuff: I am not finding fault with you, your Honor. I am just trying to find out how late we are going to work.

Mr. Talley: I join in the request that we suspend, if your Honor pleases.

The Court: One ruling is enough. Unless the purpose of it is to put the Court on the spot with the press in the

event anything untoward happens. I think the situation is sufficiently clarified to stand truthful and fair publication.

Mr. Talley: Judge, there is a jurymen here named John J. McNulty, who is a friend of mine, a college mate of my brother's.

The Court: Is he prejudiced?

Mr. Talley: I think he might be. I know he would not be accepted by the District Attorney, and I thought he might just as well be excused now.

The Court: In view of the time lost, supposing we proceed, and we will take this up some other time.

(The jurors and talesmen returned to the court-room.)

The Court: Proceed.

(Mr. Turkus resumed the questioning of the talesmen in the box).

[fol. 2429] By Mr. Turkus:

Q. Mr. Robert, I think I got to the part where you told me that you were in sympathy with law enforcement, that you had no scruple, conscientious or otherwise, against capital punishment.

A. That is right.

Q. I take it that while you have been in this jury room here, you have heard other questions put to other prospective talesmen in regard to accomplice testimony. Have you heard that?

A. Yes, sir.

Q. I will try to make this very brief with you, Mr. Robert. You have had the intellectual background that you told the Judge and the business experience that you disclosed to him, eleven years in one company; is that right?

A. Yes, sir.

Q. Will you use common sense and understanding in applying the rules of evidence and the tests that the Judge gives you in regard to accomplice testimony?

A. Yes, sir.

Q. As you are seated in the box now, have you any bias or prejudice or any fault to find either with the prosecutor of the county or with the prosecution of an indictment wherein accomplice testimony forms part of the evidence?

A. No, sir.

Q. As to these tests, will you keep uppermost in your mind that what you want to ascertain is, Does the accomplice tell the truth about a corrupt partnership of the defendants in the commission of the crime charged in the indictment?

A. Yes, sir.

Q. In other words, do you understand, sir, that there can [fol. 2430] be no conviction upon the unsupported testimony of an accomplice, and that the Judge will charge you on the law, and it is your duty to acquit if that is all there was in the case?

A. Yes, sir.

Q. Of course, there is other evidence in the case. The Judge will talk to you about other evidence in the case. He will tell you in words or substance that it need not support or need not corroborate every detail of the accomplice's testimony. Is that clear to you?

A. Yes, sir.

Q. In other words, the Judge will very plainly indicate to you that the law is that there need not be corroboration of every meticulous, every detailed point of the testimony, but that the jury may find corroboration sufficient under the law if it believes the other evidence and it tends to connect the defendants with the commission of the crime. Is that clear to you?

A. Yes, sir.

Q. If accepted as a juror, will you apply that rule of law to the facts of this case?

A. I will.

Q. And will you keep uppermost in your mind that we want to find out does the accomplice speak the truth about the participation and the part that each of these defendants, Buchalter, Capone, and Weiss played in this murder, and is there other evidence in the case which you believe which tends to connect Weiss, Buchalter and Capone with this murder? Is that clear to you?

A. Yes.

[fol. 2431] Q. And will you devote your mental faculties to the ascertainment of those facts?

A. I will.

Q. Do you understand from the other questioning that character of defendants is not in issue in a criminal case, which means that a prosecutor may not offer evidence of a

defendant's bad character unless the defendant first comes forward with evidence purporting to show he has a good character?

Mr. Talley: I object to that, if your Honor pleases. I think it is coming dangerously close to the prohibition against certain comments, against certain happenings in the trial, and I do not think that question should be asked.

Mr. Turkus: It has been asked by defense counsel of other talesmen who were accepted.

The Court: When the defense counsel asks it the next time, you object. Sustained.

Q. Another one of the defendants' lawyers has pointed out that the obligation of the defendant is that of meeting the specific charge in the indictment. Do you, Mr. Robert, understand that the burden of the District Attorney is no more and no less? I cannot go further; I can establish guilt beyond a reasonable doubt on this indictment and this indictment alone; do you understand that?

A. Yes.

Q. That is all I have to do as prosecutor here, establish guilt beyond a reasonable doubt on this charge here; do you understand that?

A. Yes, sir.

[fol. 2432] Q. Have you heretofore served as a juror in any type of case?

A. I have never served.

Q. Taking the law completely from the Judge in its every aspect—

By the Court:

Q. Any prejudice against capital punishment?

A. None, sir.

By Mr. Turkus:

Q. There is nothing mystifying about jury experience or jury service. You are here to find out, has The People of the State of New York established guilt of these defendants on this indictment beyond a reasonable doubt, and will you by your verdict endeavor to do justice in the case?

A. I will.

Q. And if you are satisfied beyond a reasonable doubt that there are three guilty men in this court-room, Weiss,

Capone, and Buchalter, and that their guilt has been established to your satisfaction beyond a reasonable doubt, will you reflect that in your verdict?

A. Yes.

Q. Is there anything in your background, in your present business connection, or any experience that you have had which would cause you to hesitate or be fearful in pronouncing such a verdict?

A. No.

Q. Mr. Marcus, do you live at Brighton Beach?

A. That is right.

Q. Have you lived in that section of Brooklyn for a number of years?

A. I have.

[fol. 2433] Q. More than five? Have you lived in any other district of Brooklyn?

A. No.

Q. So that you have resided in the Brighton Beach section—

A. Eighteen years.

Q. Did you live in some other section of Brooklyn before that?

A. No, sir.

Q. Or some other section of the city?

A. No, sir.

By the Court:

Q. Where did you come from?

A. I originally came from the Bronx.

By Mr. Turkus:

Q. Are you an insurance broker by occupation?

A. That is right.

Q. Do you work for yourself?

A. That is right.

Q. And where is your office?

A. 170 Broadway, New York.

Q. Do you maintain a large office staff there?

A. No.

Q. Are you an individual broker?

A. That is right.

Q. Then you personally solicit your business in various parts of the city?

A. That is right.

Q. Does business bring you in contact with people in the garment district?

A. No, sir.

Q. Clothing district?

A. No, sir.

Q. Or clothing truckers?

A. No, sir.

Q. Were any of the names of the union officials that I mentioned familiar names?

A. No.

[fol. 2434] Q. Do you have any contacts, directly or indirectly, in the Brownsville-East New York section of Brooklyn?

A. No, sir.

Q. Were any of the names that I mentioned to the other prospective talesmen at all familiar to you?

A. No, sir.

Q. Is the name of Lepke a familiar name to you?

A. No.

Q. The name of Gurrah?

A. No, sir.

Q. The name of Weiss er Capone at all familiar?

A. No, sir.

Q. What kind of insurance do you handle?

A. I handle everything but life.

Q. Then you handle general insurance with the exclusion of life insurance?

A. That is right.

Q. Do you have any contacts on the Brooklyn waterfront?

A. No, sir.

Q. Where do you get the bulk of your business?

A. Around my neighborhood.

Q. Around Brighton Beach?

A. That is right.

Q. Have you read anything of the investigations of Judge O'Dwyer?

A. Yes, sir.

Q. Have you retained the recollection of any of the reading matter?

A. Yes, some of it.

Q. Do you know whether you read of this particular case?

A. Yes, I did.

Q. Do you have any impression from the reading matter?

A. Yes, sir.

Q. Is the impression strong enough to be an opinion?

[fol. 2435] A. Well, I imagine it would be.

Q. Is it an opinion that goes to guilt or innocence?

A. Yes.

Q. Is it detrimental to the defendants?

A. It is.

Mr. Barshay: Challenge for cause.

The Court: Try the challenge.

HARRY MARCUS, residing at 23 Brighton 8th Place, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Mr. Marcus, if asked the same questions now under oath as you were asked before, would you answer the same way?

A. I would.

Mr. Barshay: That is all.

The Court: Any questions?

(No questions.)

The Court: Sustained.

By Mr. Talley:

Q. Mr. Robert, will you be good enough to tell me again what your line of business is?

A. Life insurance.

Q. With the New York Life, did you say?

A. That is right.

Q. What particular work do you do there?

A. Handling of correspondence in connection with disability claims.

Q. You do not make the investigation yourself, do you?

A. No, I do not.

[fol. 2436] Q. That is done by other employees who bring in their reports to you?

A. That is correct.

Q. Upon which your correspondence is based; is that it?

By the Court:

Q. Do you dictate the correspondence?

A. Yes, sir.

By Mr. Talley:

Q. Mr. Roberts, have you read anything about this case or any of the defendants in it?

A. I have.

Q. Might I ask in what papers you read anything about them?

A. The *Tribune*, possibly, and the *World-Telegram*.

Q. Did you read any articles that ran in the *Mirror*, a series of days?

A. No, sir.

Q. Did you read in the New York *Journal* the serials they had about the life of Judge O'Dwyer?

A. No, sir.

Q. From anything that you read, did you form any impression or any opinion about this case or these defendants?

A. No, I have not.

Q. Neither an impression nor an opinion?

A. No.

Q. Are you acquainted with the District Attorney or any members of his staff?

A. No, sir.

Q. Have you ever been the victim of a crime yourself?

A. Never.

Q. You never served on a jury, either criminal or civil?

A. Never. I have been called.

Q. Were you called in any criminal case?

A. Yes.

[fol. 2437] Q. Were you excused from service after being examined as you are being examined now?

A. That is right.

Q. How long ago were you called?

A. Approximately eight or nine months ago.

Q. And how often have you been called?

A. This is the third time.

Q. The Court will charge you that the burden of proving the guilt of these defendants is always on the District Attorney and that every defendant in our courts comes into court with a presumption of innocence in his favor. If you

are so charged, as you will be by this Court, will you follow those directions implicitly?

A. I will.

Q. The Court will charge you that under our forms of law the burden never shifts from The People in a criminal case to the defendants, and they are required to explain nothing. The burden of proving their guilt is always on The People. If it should develop that these defendants or any of them do not take the stand and you are charged that you are not to indulge in any unfavorable inference against them because of their failure to take the stand, will you follow that direction?

A. I will.

Q. From the questions of the District Attorney, we, representing defendants, are led to believe that the case will depend primarily upon the testimony of accomplices, that is, persons who admit their complicity in this crime and [fol. 2438] will testify against these defendants. Will you scrutinize with care and suspicion the testimony of men who admit that they are accomplices?

Mr. Turkus: Objected to as to the preamble.

The Court: Overruled.

Mr. Turkus: Did your Honor hear the word "primarily"?

The Court: Yes, it does not amount to anything.

Mr. Talley: Isn't it so?

Mr. Turkus: It is not.

Q. What is your answer?

A. I lost the last part of the question.

By the Court:

Q. Will you scrutinize with care the testimony of an accomplice, view it with suspicion and accept it with caution?

A. Yes.

By Mr. Talley:

Q. And if these so-called accomplices admit upon the stand that they have been guilty of crimes other than their admission in connection with this crime, will you take into consideration the fact that they are confessed murderers, confessed perjurers, confessed criminals, in weighing the value of their testimony?

A. Yes.

Q. You don't think you will have any difficulty in doing that?

A. No, sir.

Q. The Court will charge you that you cannot bring in a [fol. 2439] verdict of conviction, or guilty, unless you are satisfied beyond a reasonable doubt as to their guilt. If you have a reasonable doubt in your mind as to their guilt, that is, a doubt for which a reason could be given, a doubt founded upon reason, a doubt such as a man may have about the ordinary affairs of life, if you have such a doubt, will you give the benefit of that doubt to these defendants?

A. Yes.

Q. And you will have no fear or reluctance or hesitancy in bringing in a verdict of Not Guilty against all or any of these defendants after you hear all the testimony, if you have a reasonable doubt in your mind as to their guilt; is that correct?

A. That is correct.

Q. You know nobody connected with this case, do you?

A. No one.

Q. Are you taking any part in the campaign that is being waged for the District Attorney for Mayor?

A. No, sir.

Q. Do you contemplate taking any part in the campaign between now and November?

A. No, sir.

Q. Do you know of any reason that has not been adverted to here by the District Attorney or myself, why you could not sit as a fair and impartial juror in the trial of this case?

A. No, sir.

Q. Will you try and do exact justice between The People on the one hand and the defendants upon the other?

A. I will.

By Mr. Rosenthal:

[fol. 2440] Q. Mr. Robert, you say you were called eight or nine months ago for jury service?

A. That is right.

Q. Was that on a special panel?

A. Yes, sir.

Q. Before what judge?

A. Before Judge Taylor.

Q. And was Mr. Turkus the Assistant District Attorney?

A. He was.

Q. Were you examined in the box on that occasion?

A. Yes.

Q. Was I one of the attorneys in the case?

A. You were.

Q. Were you excused at that time?

A. I was.

Q. You were in the court throughout that particular trial, that is, throughout the examination of the jurors?

A. Until the time I was excused.

Q. Since that time have you read any articles in any of the papers either concerning that case or this case?

A. Yes.

Q. As the result of what you may have read in the news-papers have you formed any impression at all as to the guilt or innocence of these defendants?

A. No, I have not.

Q. Do you hold any resentment by reason of the fact that you were excused from service in the particular case that you were called before that?

A. No, I do not.

Q. How long before that particular case were you called on a special panel?

A. That was the only special panel I was called on.

Q. You have not been called again in between that time and this time?

A. No.

[fol. 2441] Q. When prior to that time were you called?

A. I believe it was the winter of 1940.

Q. Was that a capital case?

A. No.

Q. Who was the judge?

A. Judge Brancato.

Q. Were any of the attorneys in court here now attorneys in that case?

A. No.

Q. Did you actually serve in that case?

A. No, I did not.

Q. Were you called to serve in that case?

A. Yes.

Q. Were you excused at that time also?

A. Yes.

Q. The fact of your having been excused then, has that left any impression upon you that would be adverse to any defendant?

A. No.

Q. Have you read a great many articles since the time that you were called for service as a special juror in respect to the so-called investigation of Judge O'Dwyer?

A. No, I have not.

Q. You said you had read some articles, did you not?

A. Yes.

Q. Were the articles that you read confined to those two papers, the *Tribune* and *World-Telegram*?

A. That is right.

Q. At any time did you read any articles at all in the *Mirror*?

A. No.

Q. Did you ever discuss with any person any of the defendants on trial here?

A. No.

Q. Did you ever discuss, after your being excused from jury service, the fact of your being excused?

A. No, I did not.

[fol. 2442] Mr. Rosenthal: I have no further questions.

Mr. Barshay: No questions, your Honor.

Mr. Turkus: Mr. Robert is satisfactory to The People of the State.

Mr. Rosenthal: Peremptory.

(SIDNEY BERMAN, No. 3090, and HANS HINZZ, No. 3089, were called and took their seats in the jury box. The talesmen were then questioned.)

Mr. Turkus: It is four hours since lunch, Judge. May I know how long you intend to go on?

The Court: I think we will get along much nicer if we remember the way we used to practice when I tried cases. Don't watch the clock; keep it behind you.

Mr. Turkus: If you only eat a sandwich, you get hungry.

The Court: I summed up a case at eight o'clock in the evening without a sandwich.

Mr. Turkus: I summed up a case before you and I almost collapsed before I finished it.

The Court: Take care of all collapses as they come.

Mr. Turkus: That is not a plea for any sympathy.

By Mr. Turkus:

Q. Mr. Berman, do you reside at 36 Plaza Street, and you are an insurance broker?

A. That is right.

Q. Plaza Street is up near Prospect Park, isn't it? Do you know a member of the bar by the name of David Price?

[fol. 2443] A. He lives in my building.

Q. Do you know him?

A. I have met him in the court the last time I was called.

Q. Was that a case when I was prosecuting?

A. I don't think so.

Q. Do you meet Mr. Price occasionally?

A. I see him in the building, in the elevator.

By the Court:

Q. Have you ever been on the Grand Jury?

A. No.

Q. Or on a Grand Jury panel?

A. No.

Q. Has any relative of yours by the name of Berman?

A. My brother Hyman might have been; I would not know.

Q. On one of the Grand Jury panels?

A. I would not know.

Q. I am going to ask you a question, but I cannot avoid it. Was there a little difficulty connected with that?

A. No. My brother is president of the Brooklyn Society for Ethical Culture.

Q. That is all right, but there was a man by the name of Berman who was linked up with some incident which could have a bearing on your qualification. I will ask this, and it won't mean anything to you, but it will to me. Has at any time your insurance license been held up?

A. Never.

Q. Or your brother's?

A. Never.

By Mr. Turkus:

Q. What I want to know is this: Since you met Mr. Price [fol. 2444] in court have you met him in the house?

A. No.

Q. At any time since you know him have you discussed any criminal case with him?

A. I met him one day and asked him the outcome of the case that he had been trying. He told me and that was the end of that.

Q. Was that one of the O'Dwyer cases?

A. No, it was a case involving fraud against an insurance company.

Q. Being in the insurance business, naturally you were curious?

A. That is right.

Q. Did you ever meet Mr. Price in court at any time where I was the prosecutor?

A. I don't think you were the prosecutor on this case.

Q. No, I have only been handling a certain type of case.

A. Then I never met you.

Q. Have you served as a juror in any type of case?

A. No.

Q. This would be your initial experience?

A. That is right.

Q. Have you been on this special panel for some time?

A. I was called once, but earlier this year.

Q. And did you get as far as where you are now?

A. Yes, except it was in the witness chair.

Q. They were examining the jurors individually?

A. That is right.

Q. Who was the judge in that case, do you recall?

A. Yes, Judge Fitzgerald.

[fol. 2445] Q. And Mr. Price was one of the defense lawyers?

A. That is right.

Q. Do you remember who the prosecutor was? Was it Mr. Rooney?

A. A good-looking fellow.

Q. If you are taken as a juror, you don't want to know whether I am good looking; you want to know if this case is good looking.

The Court: In view of the lateness and the anxiety of counsel to watch the clock, economize. Maybe the Court will be good-natured in a few hours.

Q. Have you lived in any other district of Brooklyn beside that Prospect Park section?

A. In that vicinity for the last seventeen years.

Q. Where do you maintain your office?

A. 16 Court Street, Brooklyn.

Q. And are you in business yourself?

A. With my brother, under the name of Hyman Berman & Brother.

Q. Is that the brother you mentioned?

A. He is the president of the Brooklyn Society of Ethical Culture.

By the Court:

Q. That is on Prospect Park West?

A. That is right. That is where the school is too.

By Mr. Turkus:

Q. That is in the vicinity of that 8th Avenue Temple?

A. The Society?

Q. Yes.

A. The Society House is 500 First Street.

[fol. 2446] Q. Does your business, Mr. Berman, bring you in contact with various lawyers?

A. No, not my business. I know various lawyers.

Q. Is Mr. Price's former partner, William W. Kleinman, who is now in the United States Army,—is that a familiar name?

A. Yes, I have heard the name.

Q. Do you know William Kleinman personally?

A. No.

Q. There are nine lawyers in this case. I don't stress the nine.

A. I recognize one name. Bertram Wegman I recall, was in a high school fraternity of mine. We both went to Manual and were in the same fraternity.

Q. You got out of Manual in '20 or '21?

A. No, I am only thirty years old. He was away before me.

Q. Is he a friend of yours?

A. No.

Q. Did you meet him in the fraternity?

A. The fraternity is out of existence, I would say.

Q. Any of these other lawyers, do you know any of them?

A. Mr. Barshay, I think, lives in the neighborhood, and I have seen him occasionally in the neighborhood drug store on Underhill Avenue.

Q. Any of these other lawyers?

A. No. I do not know whether Mr. Rosenthal was with

Price that day. I do not remember seeing his face, but there was someone looked like him. Might have been Sidney Gottesman.

By the Court:

[fol. 2447] Q. You are right at the Union Temple?

A. I beg pardon?

Q. You live right by Union Temple?

A. Yes, sir.

Q. And I assume you go to the men's club meetings there?

A. I am a member of the men's club.

Q. You had lectures there on crime?

A. No, I have never heard one.

Q. Nothing on this subject?

A. Nothing.

Q. In connection with the O'Dwyer work?

A. No. I have only been to several meetings, and they never had lectures when I was there.

By Mr. Turkus:

Q. Is your acquaintanceship with Mr. Barshay limited to meeting him in the drug store on occasion in the neighborhood?

A. I don't think I have ever been introduced to him, but I have seen him.

Q. Do you come in contact with other lawyers?

A. Yes.

Q. Other lawyers that you know?

A. Yes.

Q. Do you know whether they specialize in the defense of criminal cases?

A. I don't think they do.

Q. Would you describe them as general practitioners?

A. That is all.

Q. Do you know Mr. Gittelson, who is associated with Mr. Barshay?

A. No.

Q. Do you know where Mr. Barshay's law office is located?

A. No.

[fol. 2448] Q. Do you know where Mr. Wegman's law office is located?

A. No.

Q. Or Mr. Price's law office?

A. I think it is 66 Court Street.

Q. Do you deal with any members of the bar in insurance matters? In other words, do you solicit any of their business?

A. No. Occasionally a bond will be written, and our name will be put on as broker by some of my lawyer friends.

By the Court:

Q. A bail bond?

A. No, administration bond.

By Mr. Turkus:

Q. The type of insurance that you are engaged in excludes bail bonds?

A. Absolutely.

Q. There is nothing wrong about bail bonds. Bail is something that is allowed in certain cases, and everybody should have it. What I was trying to find out, Mr. Berman, was this: Whether you had contact with a certain group of lawyers that I ought to know about.

A. I understand.

Q. I am not trying to be offensive or embarrassing to you. Have you been in the insurance business for a number of years?

A. Yes, twelve years.

Q. So that would bring you on up to when you left school?

A. That is right. I went with my brother. He has been over thirty.

Q. Do you know the District Attorney of the county, [fol. 2449] Judge O'Dwyer, personally?

A. No.

Q. Or any Assistant on his staff?

A. No.

Q. Is there anything about that casual acquaintanceship that you have had with Mr. Barshay and Mr. Wegman and Mr. Price that would in any wise embarrass you in rendering jury service in this case?

A. Not at all.

Q. Do you realize, sir, this is an important issue, important to The People of the State of New York and important to the defendants as well?

A. Yes.

Q. Would you be embarrassed if you met Mr. Barshay in the future if your findings were against his client or the other defendants?

A. No.

By the Court:

Q. I take it your membership in Union Temple includes gymnasium and swimming pool contacts?

A. No, I am not a member of the Temple. I am just a member of the men's club.

Q. Just when they meet and have discussion?

A. Yes.

Q. That is Rabbi Tedestes(?)?

A. A very good friend of mine.

By Mr. Turkus:

Q. There is this point of capital punishment that the District Attorney is obliged to go into. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No.

Q. In this particular case it has been pointed out, and the attention of the jury has been directed, each one of [fol. 2450] them, by defendants' counsel, one way or the other, that the defendant Buchalter serves a long jail term presently, having been convicted of other offenses. Would you be inclined to relax your thoughts in connection with capital punishment because he is serving a long jail term?

A. No.

Q. Or would you be inclined to relax from a proper jury verdict in this case because of that long jail term?

A. No.

Q. Or deviate from a proper result?

A. No.

Q. Your insurance business, is that gathered from any particular location or any particular industry, or is it general in its nature?

A. General.

By the Court:

Q. Who tends to it when you are away.

A. My brother.

By Mr. Turkus:

Q. Does your business bring you in contact with anyone engaged in the manufacture of clothes?

A. We have one account, ladies' coats and suits, my brother-in-law.

Q. Your brother-in-law is in that business?

A. That is right.

Q. What is his name?

A. Sam Dick.

Q. Do you know the trade name?

A. Samuel H. Dick, Incorporated.

Q. Sometimes his clothes have a name?

A. Not that type of business. I know what you mean.

Q. He manufactures ladies' garments?

A. Yes.

[fol. 2451] Q. And he manufactures those garments in the garment or clothing district of Manhattan?

A. 37th Street, 38th.

Q. Off Broadway?

A. Off 7th Avenue, 246 West 38th.

Q. How many years has he been in that business?

A. Well, he has been under different names from time to time.

Q. The manufacture of clothing.

A. I would say ten years.

Q. Do you have any contacts in the garment or clothing district?

A. No.

Q. Is the name of Lepke a familiar name to you?

A. Yes.

Q. The name of Gurrah?

A. Yes.

Q. Shapiro, Gurrah? The same individual, you know that?

A. Yes.

Q. From anything that you have heard from your brother-in-law, if you have heard anything, or anything that you have read, have you an impression about those names?

A. No.

Q. Is the name of Hyman (Curley) Holtz a familiar name?

A. No.

Q. Is your brother-in-law the one chiefly interested in this manufacture of ladies' clothes?

A. Yes.

Q. I take it it is really a one-man business that has been incorporated?

A. That is right.

Q. You supply insurance to him in the conduct of his business?

A. Yes.

Q. I take it that would be compensation, fire, and theft?

A. Burglary, and so forth.

[fol. 2452] Q. When you say your brother-in-law, is he married to your sister?

A. That is right.

Q. In what manner did the names of Lepke and Gurrah become familiar to you?

A. I read it in the newspaper.

Q. Did you ever hear anything said by your brother-in-law?

A. Never.

Q. Are you on good terms with him?

A. Very good.

Q. Did you follow either the Dewey or the O'Dwyer investigations with any degree of interest, in the newspapers?

A. Neither of them.

Q. I take it that your brother-in-law handles the product from the raw state, that is, taking the goods, having it designed into garments, manufacturing the garment, and then distributing it through the truckers?

A. Except that the garment is manufactured by contractors and brought into his place and then distributed, and not as a rule by trucking, because his customers would be out of town mostly, and the larger department stores in New York. I think a lot of it goes railway express.

Q. Do you know whether he has any Pennsylvania accounts?

A. I don't, no.

Q. In connection with the members of the bar that you know, Mr. Berman, did any of them speak to you about any of the individuals now in the court-room?

A. No.

Q. Did you ever hear any discussions about any of these [fol. 2453] three defendants?

A. No.

Q. Capone, Weiss, or Buchalter? Do you have any other connection, clothing trucking, clothing of any kind, nature or description that we have not discussed?

A. No.

Q. Do you have any accounts in the Brownsville-East New York section?

A. No.

Q. Would you say your business is confined chiefly to Manhattan or to Brooklyn?

A. Manhattan.

Q. Were any of the names of union officials at all familiar to you?

A. No.

Q. Weinstein, Katz?

A. No.

Q. Any familiarity about the name of Bellanca or Belia?

A. No.

Q. Or Tosca?

A. No.

Q. Or Hyman (Curley) Holtz, Whitey Deutch?

A. No.

Q. When is the last time that you have seen your brother-in-law?

A. Sunday.

Q. Was that after you received your notice?

A. Yes.

Q. Did you have any reading knowledge of any of the names of individuals in Brownsville, East New York, like Harry (Pittsburgh Phil) Strauss, Martin (Bugsy) Goldstein?

A. I have seen the names in the paper.

Q. Did you ever hear their names discussed by anyone?

A. No.

Q. Did you live in any section of Brooklyn other than the [fol. 2454] Hill section?

A. Schenectady Avenue.

Q. That is East New York?

A. Eastern Parkway. I would not call it East New York.

Q. That would be in the vicinity of Dubrow's, the Famous Restaurant?

A. It would be up even higher than that, but that goes back many, many years.

Q. Do you travel through the borough in the discharge of your duties?

A. Yes.

Q. Have you been to the Famous Restaurant, Dubrow's Restaurant?

A. No.

Q. Does business bring you into the garment or clothing district?

A. Other than my brother-in-law's place, no others.

Q. Any business bring you into contact with the Brooklyn waterfront?

A. No.

Q. Do you know the District Attorney of the county or any member of his staff?

A. No.

Q. And I believe you told Judge Taylor that you attended no discourses or lectures upon the apprehension of criminals and their prosecution?

A. No.

Q. Not having served as a juror before, will you take the law implicitly from the Judge if accepted in this case?

A. Yes.

Q. Did you hear the discussion I had about accomplice testimony?

A. Yes.

Q. Would you have made different response?

A. No.

Q. Were the matters that I discussed, were they clear and [fol. 2455] understandable to you?

A. Yes.

Q. Is there any reason, by way of business or something that I failed to elicit by any response, that would go to your qualification to sit as a juror in this case?

A. No.

Q. If I satisfied you from the believable evidence in the case that the guilt of these defendants has been established beyond a reasonable doubt, would you hesitate to reflect that in your verdict?

A. No.

Q. Would you do so fearlessly?

A. Yes.

Q. There is nothing that I failed to bring out by questioning that would go to your ability to be a fair and honest and conscientious juror and discharge your duties to the

People of the State of New York and all of them; is that correct?

A. That is correct.

Q. Mr. Hinze, were you a juror in any case that I tried as a prosecutor?

A. Yes, two.

Q. And you sat through both cases?

A. No, I was called and examined by you this year.

Q. Do you remember whether I said "Satisfactory" when I examined you?

Mr. Barshay: That is objected to.

Mr. Turkus: I want to save time. If I did I am going to say "Satisfactory" now.

A. You accepted me.

Mr. Turkus: All right, then. That settles it. I do [fol. 2456] not have to go into any discussions.

Mr. Fischbein: He was challenged for cause.

Mr. Turkus: By me?

Mr. Fischbein: No.

Mr. Turkus: If he was satisfactory to me once, he is satisfactory forever. That is the end of it.

By Mr. Barshay:

Q. You were satisfactory, Mr. Turkus says, to him on two other occasions?

A. Yes.

Q. Did that find favor with him in your eyes to the point where you may be influenced in this case?

A. No.

Q. Of course, Mr. Fischbein said that someone challenged you for cause in the other case.

A. Mr. Rosenthal.

By the Court:

Q. Were you an importer?

A. No more. I used to import machinery. Now I am a machine dealer, domestic machines.

Q. What kind of machines?

A. Printers' machines.

By Mr. Barshay:

Q. You were called only a short time ago as a blue ribbon juror?

A. Yes.

Q. How long ago?

A. In May.

Q. Of this year?

A. Yes, those two young fellows.

Q. And before that?

A. Silverman case.

Q. That was a special jury and you were satisfactory to Mr. Turkus when he was the attorney in that case?

A. Yes.

[fol. 2457] Q. No matter which side you are on, you are satisfactory to Turkus.

Mr. Turkus: He must be a good juror.

Q. Did you sit in the Silverman case as a juror?

A. I was called.

By the Court:

Q. Did you act as a juryman?

A. No, I did not. I have been called on the jury for eight years on the average of twice a year.

By Mr. Barshay:

Q. Were you examined by Mr. Turkus in the Silverman case?

A. Yes.

Q. Were you examined by Mr. Turkus in the last case?

A. Yes.

Q. And before that were you on any other jury?

A. Yes.

Q. May I know?

A. I was not examined.

Q. How many times did you serve as a juror?

A. Eight years ago.

Q. The name of Max Silverman, according to Mr. Turkus's questioning, may be prominent—I do not know—in this case. He was a defendant in a case where you were called and examined as a juror. Would that affect your judgment here?

A. No.

Q. Is there something that you have heard or read when Mr. Silverman was in the court-room which would influence you in any direction in this case?

A. No.

Q. Would you be more likely to believe him or less likely [fol. 2458] to believe him if he should be a witness in this case, by virtue of the experience you had?

Mr. Turkus: I object to that. That is speculation.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. You formed some idea because of what you read?

A. Never read this case.

Q. You said you read——

A. The headlines.

Q. What paper, please?

A. Evening *Sun*.

Q. Any other paper?

A. *Times*.

Q. Read them more than once?

A. *Times* in the morning.

Q. I mean did you read about this case more than once?

A. On occasion.

Q. On occasions you saw the name Lepke?

A. Headlines.

Q. On many occasions?

A. No. I saw his picture in the paper.

Q. Did you see it in *P. M.*?

A. No, I never read it.

Q. Did you see it in some other newspaper? More than once?

A. No.

Q. Over a period of time? Over a long period of time?

A. Say two months.

Q. And as you saw it from time to time and saw headlines with respect to it, did you get some idea with respect to him?

A. Well, yes.

Q. Be fair with me.

A. Yes.

[fol. 2459] Q. And that idea was unfavorable too?

A. Yes.

Q. It was? And it still is unfavorable?

A. At the present time, yes.

Q. Nothing has happened which would remove that unfavorable thought that you had concerning him?

A. No.

Q. And you would expect, consequently, that something should happen in the course of the trial by way of testimony which would remove that unfavorable idea that you have?

A. Yes.

Q. And I take it you would expect someone on behalf of defendant to offer that kind of testimony?

A. Yes.

Q. And if not you will still remain with that unfavorable impression?

A. Yes.

Q. And I take it that goes to the guilt or innocence of the man.

Mr. Barshay: I challenge him.

The Court: Try the challenge.

HANS HINZE, of 902 Ditmas Avenue, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Now, under oath, if asked the same questions, would you make the same answers?

A. Yes, sir.

By Mr. Furkus:

Q. Would you, sir, if you were instructed by the Court that a defendant need offer no proof in a criminal case, would you accept that instruction of law?

A. Yes.

[fol. 2460] Q. And if you were told by the Judge in a criminal case that it is the duty of the District Attorney to establish guilt beyond a reasonable doubt, and his obligation and burden alone, would you follow that instruction of law?

A. Yes.

Q. And if the Judge were to tell you that a defendant may seat himself at a counsel table and remain mute—by remaining mute, I mean by saying nothing, offering no evidence and sitting still, and that no inference unfavorable to him could be drawn against him from the fact that he remained mute, would you follow that instruction of law?

A. Yes.

Q. Now, understanding that a defendant has no burden or obligation, is your impression that you have gathered one that you can put aside and decide this case on the evidence?

A. Yes, sir.

Q. And have you got the mental willpower and the understanding where you can lay aside some impression you have gathered from a newspaper and decide the case on the evidence?

A. Oh, yes.

Q. And if accepted as a juror, will you decide this case on the evidence?

A. Oh, yes.

By the Court:

Q. Are you sure you can completely disregard it and decide the case upon the evidence?

A. Yes.

Q. Will you promise that you will?

A. Oh, yes.

Mr. Rosenthal: May I ask a couple of questions?

[fol. 2461] The Court: Yes.

Q. You recall me, sir?

A. Yes, sir.

Q. You were called as a jurymen on a special panel about nine months ago?

A. Yes, sir.

Q. At that time you were challenged for cause, were you not?

A. I don't remember.

Q. The same way as now?

A. Yes.

Q. And the judge excused you and sustained the cause, is that correct, sir?

A. I presume so; I don't remember.

Q. Don't you recall whether or not at that time you were excused by the Court because of the fact that you had gained an opinion which was adverse at that time to those defendants?

A. No, not at all. At that time I had just started a new business after losing my import business, and I was needed in the business—it is a one-man business—and I asked the

Judge to excuse me because I had to go West the following week on very important appointments to gain some agencies. Now I recall that.

Q. You were called on the stand, weren't you?

A. Yes, sir. Each juror was called on the stand.

Q. And you were sworn on the stand?

A. Yes, sir.

Q. And do you recall whether or not counsel did not at that time say that he challenged you for cause?

A. I don't remember.

Q. Do you recall whether or not the Judge did not sustain at that time the cause?

[fol. 2462] A. I remember the Judge said, "You are excused."

Q. In this case you have an opinion that goes to the guilt or innocence of these defendants, have you not?

A. Formed an opinion?

Q. Yes.

A. Yes, as I testified.

By the Court:

Q. Do you understand the question? Have you formed an opinion—You are not listening.

A. Yes.

Q. Have you formed an opinion as to whether or not these defendants are guilty of this charge?

A. Of this charge?

Q. Yes, exactly.

A. No, I have not.

Q. Do you know anything about this charge?

A. Yes.

Q. Have you read about this charge?

A. No.

Q. You have not read about this charge?

A. I read about it four or five months ago.

Q. Did you read headlines?

A. Those two papers that I read.

Q. Did you read headlines about the alleged murder of Joseph Rosen?

A. No, sir.

Q. Did you read anything about the alleged connection of these defendants with that murder?

A. No.

By Mr. Rosenthal:

Q. Do you understand English well, Mr. Hinze?

A. Yes.

Q. Did you understand me when I asked you the question whether you had formed an opinion as to the guilt or innocence of these defendants—

A. From what I had read?

Q. Yes.

A. Months ago.

Q. Certainly from what you had read.

A. Yes.

Q. And when you told me that you had formed an opinion concerning these defendants—

A. Only one, because I only read about one.

Q. As to one of the defendants. All right, put it that way. When you told me that you had formed an opinion as to one of these defendants on trial on this charge, did you mean it when you said yes?

A. No, I answered the Judge no, afterwards, because the Judge put it in a different way and I understood it better.

Q. You have a fixed opinion now as to the guilt or innocence of one defendant on trial here, haven't you?

A. No.

Q. Have you an opinion at all as to the guilt or innocence?

A. No.

Q. Of one of the defendants on trial?

A. No.

Q. When you answered Mr. Barshay, also, you said you had an opinion as to the guilt or innocence—just a minute—as to the guilt of one of the men on trial here. Didn't you say that?

A. Yes, as to the general—what would we call it—behavior, what kind of a man he is in general, not upon the guilt of a man.

Q. Then you have an opinion—let us put it this way—as to the character of one of the men on trial?

A. That is it.

[fol. 2464] Q. And that opinion—

A. Is not favorable.

Q. Is unfavorable?

A. Unfavorable.

Q. You are prejudiced against that particular individual, are you not?

A. Yes.

Q. And as you sit here now you are prejudiced as against that particular individual, aren't you?

A. Yes.

Q. It would take some evidence on his part to remove that prejudice from your mind, wouldn't it?

A. Yes, sir.

Q. You told me a few minutes ago that you would lay that completely aside and disregard it. Now you tell counsel that you would not, it would require evidence to remove it. You do not seem to know what you are talking about. Challenge is sustained.

By Mr. Barshay:

Q. Now, Mr. Berman, I have been going to that Sam's drug store for upwards of eleven years. Nine of those years I was Assistant District Attorney. Did you see me there during those years?

A. I don't think so.

Q. Did you ever speak to me in your life?

A. No.

Q. Do you ever remember me addressing you or speaking to you?

A. No, you addressed my wife, but not me.

Q. To your knowledge, do I know your wife?

A. At a Giant's baseball game, you sat in the box.

Q. But before that I did not know your wife?

A. I was not to that game.

[fol. 2465] Q. That was the last game of the Giants and Brooklyn Dodgers in Ebbets Field?

A. Yes, sir.

Q. We happened to have the same box?

A. Yes.

Q. And are you the man who- I later met in that drug store?

A. You saw.

Q. That is what I mean. Were we introduced at all?

A. No.

Mr. Barshay: I just want to state for the record that I have never seen or spoken to this man to my knowledge other than what he just stated, and I never met his wife before, and I did not know she was his wife.

Q. You won't hold that against my client, will you?

A. No.

Q. You belong to the Union Temple men's club, I think, with Assistant District Attorney Charles M. Cohen. Do you know him?

A. I do not know him.

Q. Do you know he belongs to that?

A. No, I do not.

Q. You live in the same house as candidate for County Judge Goldstein?

A. No, he lives 50 Plaza Street.

Q. Do you know of him?

A. Yes, I know of him from a business standpoint, not socially.

Q. Did you ever discuss, while discussing business, any of his work?

A. Only life insurance.

Q. And while he was an Assistant District Attorney, did you know him?

A. This all happened this year, the last six months.

Q. From your knowledge of any of the names mentioned, [fol. 2466] myself, Price, Charles M. Cohen, Assistant District Attorney, City Court Judge Goldstein, would that influence you with respect to the guilt or innocence of these defendants?

A. No.

Q. You said you read about the names.

A. Yes.

Q. Often?

A. No.

Q. By virtue of reading, did you form any opinion with respect to them?

A. No, my reading would go back to the original investigation, you might say in the beginning of '40, perhaps, and since then I have read nothing about it.

Q. Do you retain any of the facts that you read about it in '40?

A. Not at all.

Q. Then did you form any impression with respect to the defendants?

A. At that time?

Q. Yes.

A. I might have had an opinion at that time, but it has been since banished from my mind.

Q. And presently are you free of any prejudice?

A. Yes.

Q. Bias, or sympathy in this case?

A. Absolutely.

Q. Have you ever served as a juror?

A. Never.

Q. You said that your brother might have been a Grand Juror. Is that what you said?

A. I said that, but now that I think about it I don't think he was.

Q. Were you personally the victim of any crime?

A. No.

Q. Do you know any intimates in the Police Department?

A. No.

Q. Do you know anyone at all connected with Judge [fol. 2467] O'Dwyer's office?

A. I might say a friend of mine is a police captain.

Q. May I know his name?

A. Henley (?), two brothers.

Q. I know they have nothing to do with this case. One is in the Telegraph Bureau.

A. That is the answer.

Q. As you sat here and heard the other jurors being questioned, Mr. Berman, were you influenced in any direction whatever?

A. No.

Q. So, knowing none of the people involved and none of the facts in this case, as you say, may I ask you whether or not you are in accord with the principle of law which gives to a defendant a very substantial right known as the presumption of innocence.

A. Yes.

Q. And do you believe that the defendants sitting here now just as innocent under the law, presumed innocent under the law, as any person in this court-room?

A. That is right.

Q. And when they said, "Not guilty," it meant they denied anybody's accusation against them?

A. That is right.

Q. That is, they denied—speaking for my client—denied that he is anybody's accomplice and denied that he participated in the commission of the crime in any way whatever?

A. Yes.

Q. And you will use that presumption as evidence in this case?

A. Yes.

Q. And do you know further that when he said that, by his plea of Not Guilty in reality he said to the District Attorney, "Now, with competent and believable evidence, quality evidence, you go ahead and prove what you said in the indictment."

A. That is right.

Mr. Turkus: Both of those are bad instructions of law.

Q. Well, I am not giving you instructions of law.

Mr. Turkus: That is what they amounted to.

Q. You take them from the Court.

Mr. Turkus: Just a minute. I object to it.

The Court: Sustained.

Q. Mind you, Mr. Berman, at no time am I instructing you with respect to law. You take that from his Honor.

The Court: Every lawyer in the case has done a great deal of instructing as to the law. That is the reason the case has not been completed by this time.

Q. While I am trying to qualify you to find whether you will follow the law as his Honor shall give it to you, I may use different language, but you understand it now, that the burden of proof is with him. Maybe that will meet Mr. Turkus's objection. The burden of proof, when he assumes it, when the trial starts, is something that he assumes for all purposes and for all times, and never shifts to the defendant. You understand that?

A. That is right.

Q. In other words, the defendant need not explain any charge or accusation or piece of evidence against him. Do you believe he can sit there silently and from his silence [fol. 2469] you may draw no unfavorable inference; is that correct?

A. That is correct.

Q. And if, perchance, some juror may say, "Well, why did the others take the stand and explain? Mr. Buchalter didn't," you kindly call to their attention reasonably the instructions of the Court. Each counsel can plan his defense in a manner he sees fit. And don't take this on my

part as a promise that Mr. Buchalter will not take the stand, but if he does, you will treat him like every other witness, won't you?

A. Yes.

Mr. Turkus: Just a minute. That is bad instruction.

Mr. Barshay: I am not giving him instruction.

Mr. Turkus: I do not care what you call it. He is getting the juror to promise that if Mr. Buchalter takes the stand he will be treated like any witness. He is not entitled to be treated like any other witness.

Mr. Barshay: I object to that remark.

Mr. Turkus: No, you are forgetting something very important.

The Court: Regardless of the remark, the Court sustains the objection.

Mr. Barshay: My objection?

The Court: I think it is beyond the scope.

Mr. Barshay: You sustain my objection, sir? There are two objections at the same time.

The Court: Only one.

[fol. 2470] Mr. Barshay: I have an objection to Mr. Turkus's statement.

The Court: You cannot object to the statement.

Q. There are rules which govern a man's taking the stand as a witness in his own behalf. His Honor shall outline them. You will follow them?

A. Yes.

Q. One of them shall be that you may take into consideration the fact that on a previous occasion, only for the purpose of testing his credibility and for no other purpose, his past conviction; will you do that? He may even say to you, and I think he will, that the defendant is an interested witness as a matter of law. You will follow that instruction?

A. Yes.

Q. In all other respects, you will give him the same test as any other witness, won't you?

A. Yes.

Q. Are we clear on that point?

A. Yes.

Q. That is what I meant from the very beginning. You won't be prejudiced against him by virtue—You won't believe him less by virtue of those two convictions, if you find

from all the evidence that you can believe the testimony that he gives?

The Court: Do I understand you are asking—What is that question?

(Pending question read.)

The Court: You mean if the witness takes the stand and shows he has criminal convictions, that the juryman may not consider it?

[fol. 2471] Mr. Barshay: I do not say that. Just the opposite. I say he may consider it and still believe he is telling the truth.

The Court: Of course, he may believe it.

Mr. Barshay: There is no quarrel.

The Court: Otherwise there may be no issue to submit to the jury.

Mr. Barshay: Exactly what I urge.

By the Court:

Q. You understand, Mr. Juryman, in view of what has been asked—and it is quite far afield of what is proper in examination of a talesman—when a man takes the stand you are entitled to know if he is a convict and you are entitled to consider that in determining whether or not he is worthy of belief. If the Court so charges you, will you follow it?

A. Yes, sir.

By Mr. Barshay:

Q. You heard that very often throughout the days that you have been here, isn't that so?

A. Yes.

The Court: No further on questions of law. You will only work longer.

Q. Now with respect to the person who claims he is an accomplice, his Honor will charge you quite differently, and without taking the province of the Court, briefly I may say to you you must look with suspicion and caution and care [fol. 2972] with respect to him. He has a special way of being tested. Will you do that?

A. Yes.

Q. First you will want to know whether he is an accomplice, won't you?

A. Yes.

Q. Then you will want to know why he is giving his testimony, won't you?

A. Yes.

Q. Then you will want to know whether he has a motive to give the testimony, won't you?

A. Yes.

Q. Then you will want to know whether or not he expects any reward for giving such testimony, won't you?

A. Yes.

The Court: I wish some objections would be made. We would have had this jury selected two or three weeks ago if there had been more objections.

By the Court:

Q. Will you follow all instructions of the Court?

A. Yes, sir.

Q. On questions of law?

A. Absolutely.

Q. Strictly?

A. Definitely.

The Court: You cannot try the case on every point of law that may come up.

Mr. Barshay: I cannot understand. All along we have questioned the prospective jurors along this line.

The Court: It has made a farce in the selection of the [fol. 2473] jury, a public scandal.

Mr. Barshay: I object to your Honor addressing that to the defense.

The Court: I have said all I am going to say.

Mr. Barshay: And I take an exception to it.

The Court: Very well, make it double-barreled. Now go ahead.

I tell you right now, when you get through those seats are going to be filled again. The examination is going to continue. There has been no juryman selected today, and the Court is not going to be influenced in the matter of time.

Mr. Barshay: Just a second. I take an exception to that remark. It seems to me that every time, at the close of the day, when I continue to question a juror—

The Court: Never mind what it seems to you. Will you kindly proceed with the case?

Mr. Barshay: I am trying to.

The Court: And stop trying to goad the Court into reversible error, because the Court will not be goaded. You will be the loser in the long run of any altercation in which you involve the Court.

Mr. Barshay: It seems sometimes the Court tries to involve me in an argument.

The Court: The Court has its wits, is not angry, is not [fol. 2474] provoked, and is not losing its head. Now please proceed.

Mr. Barshay: I just want it known, your Honor, that I questioned a juror the same way only two hours ago, and there was not a single word either from the District Attorney or Your Honor.

The Court: You will please proceed. You are out of order.

Mr. Barshay: Respectfully except.

By Mr. Barshay:

Q. I take it this argument on my part won't influence you one way or the other in this case?

A. No.

Q. I am sure you feel, as a juror, that counsel can make a reasonable effort in qualifying prospective jurors; correct?

A. Yes.

Q. From all the evidence in the case, taking into consideration the background of the person who claims to be an accomplice and all other things with respect to him, let us say for the sake of argument you do believe, if the Court shall tell you that you cannot convict upon the uncorroborated testimony of that person, assuming you do believe him, will you follow that?

A. Yes.

Q. And you will want independent proof, independent of this alleged accomplice's testimony, to find out whether or not he is corroborated? Won't you expect that?

A. Yes, sir.

[fol. 2475] Q. And if it comes from a source no better than that of the accomplice, you will consider that, won't you?

A. Yes.

Q. And you will weigh it carefully. And the same rule will apply as to the defendant, if they have prior convictions or prior admissions of commissions of murders and other crimes, you will weigh carefully their testimony before you say, "I believe such independent evidence," and call it corroboration; will you do that?

A. Yes.

Q. And if you find that they have a motive for giving such testimony, you will use that as a rule in measuring whether you accept it or not?

A. Yes.

Q. And if you find that their testimony has been given because of some inducement, admittedly or not, held out to them, if you believe it, you will weigh that, too?

A. Yes.

Mr. Turkus: I object to that. That question is ambiguous. I do not know whether it is if you believe the accomplice or you believe the inducement.

Mr. Parshay: I am past the accomplice stage, Mr. Turkus.

The Court: Sustained.

Mr. Turkus: It has been sustained, so pass it some more.

Q. If you believe that a person who offers testimony tending to corroborate an alleged accomplice gives such testimony because he expects something for it, if you believe it, will you consider it?

Mr. Turkus: I object to the form of the question.

The Court: Overruled.

[fol. 2476] Q. Will you do that?

A. I will consider it.

Q. Now, Mr. Turkus has said something about finding fault with the District Attorney who solves a case from the inside. I take it you understand that your job as a juror is not to find fault with any individual in the case, merely decide on the evidence. And I take it that because the District Attorney or some Assistant accepts the testimony of an accomplice, you are not to be influenced by that?

A. No.

Q. You will be the one to decide whether you shall, isn't that so?

A. Yes.

Q. Each defendant here is entitled to a separate trial,

even though they are being tried together. Can I have your promise that you will consider the evidence given with respect to one defendant only against the defendant whom it applies to unless the Court shall charge you otherwise?

A. Yes.

Q. And no matter how long the trial takes, you will keep that principle in mind?

A. Yes.

Q. The fact that the District Attorney opens to the jury first—we don't have to if we don't want to—will not influence you in believing what he says to be evidence in the case unless later it becomes evidence from the witness stand?

A. Yes.

Q. In other words, remarks from here are not evidence. Mr. Turkus has also said to some jurors, because three lawyers may use the same argument on you you should [fol. 2477] not think that the argument is stronger. By the same quality of reasoning, Mr. Berman, sometimes when an argument is repeated it loses its weight. You understand that?

A. Yes.

Q. But you also understand that each counsel has a right to urge his argument in the light in which he sees it, irrespective of any other; is that so?

A. Yes.

Q. And I shall take it you won't allow it to lose weight because it is repeated by other counsel?

A. That is right.

Q. And if it aids you and coincides with your interpretation of the evidence, you will so regard it. So, Mr. Berman, you promise to listen to whatever law the Court shall give, but after reasoning with your fellow jurors as to the facts, listening to their explanations, having formed your own opinion, will you be the exclusive judge of the facts and of the believability of every witness yourself?

A. Yes.

Q. And can Mr. Buchalter entrust to you the preservation of his legal rights?

A. Yes.

Q. And if you fail to be convinced beyond a reasonable doubt, I take it you would not hesitate to say so?

○ A. Yes.

By Mr. Rosenthal:

Q. Mr. Berman, I do not know whether you were asked whether you know Mr. Turkus or Mr. Sol Klein, who is now an Assistant District Attorney and who was formerly with David Price.

Mr. Turkus: He was not. He has handled some appeals for Price, but he never was in his office.

[fol. 2478] Q. Did you say that you knew Mr. Kleinman?

A. I do not know Mr. Kleinman nor Mr. Klein nor Mr. Turkus.

Q. Have you ever at any time heard any speeches, either over the radio or in any men's club or association with respect to crime?

A. No.

Q. I take it that this inspector that you know, or captain, is his son a lawyer?

A. His son is a lawyer out in Queens. I do not know him very well.

Q. You have never discussed any police matter?

A. No.

Q. Have you ever sat on a criminal case to conclusion?

A. No.

Q. When the Judge charged the jury on the law? You realize, or do you realize, that the fact that the defendants have been indicted raises or should raise no presumption in your mind of their guilt? As you sit in the jury box now is your mind such that you would start off at scratch, and is your mind further such that you will compel the District Attorney, through witnesses whom you believe, to prove to your satisfaction beyond a reasonable doubt the guilt of each of these defendants?

A. That is right.

Q. You understand that the Judge, whether you like it or not, will tell you the law, which is binding in this case. And you understand, whether anybody else likes it or not, that your duty is to determine the facts, irrespective of what anyone may say, and I include in that all lawyers for [fol. 2479] The People and defense, and include the Judge also. You understand that?

A. Yes.

Q. In so far as the defendant—I do not know whether you were present in court when I explained that the defendant represented by myself and associates is the defendant Capone. So far as the evidence, or my examination of

any witnesses is concerned, or my placing in evidence any proof, it is on behalf of that defendant. Is that clear?

A. Yes.

Q. You do not feel, sir, that merely because three men are seated together here on trial, that necessarily that means that these three men are involved in the crime charged, do you?

A. No.

Q. The time may come when the Court will charge you that certain evidence adduced by witnesses is applicable to one or more defendants, or to all, and do you understand that then your job will be to see to it in the jury room that you only permit discussion as to any particular defendant in accordance with the instructions of the law given by the Court as far as the particular testimony applicable to him?

A. Yes.

Q. You find no fault with that?

A. No.

Q. The bringing of men together and trying them as one has not got the effect upon you that you feel that necessarily—I don't try to infer that anyone is guilty here—each attorney takes care of his own client and knows the facts in so far as his client is concerned, you understand, and so by making a statement, which I intend to make, it [fol. 2480] is no reflection upon any of the other defendants or what their defense may be, which is known to them exclusively. That is clear?

A. That is right.

Q. You don't feel that because one of a group may be guilty that necessarily because three are on trial that the three must be guilty?

A. No.

Q. And you, if you are called or accepted as a jurymen, will see to it that in so far as the proof against my client is concerned, that it convinces you beyond a reasonable doubt as to his guilt before you convict him?

A. Yes.

Q. Any statement that I may make in the short examination that I will give you as to law, is with no intent on my part to invade the province of the Judge; is that clear?

A. Yes.

Q. The only purpose that I may have in mind in even talking about the law is to ascertain whether you as a

citizen, with a perfect right to have an opinion of your own, have a different idea as to the law, which would suborn the idea or the law as charged by the Court. That is the only reason, is that clear?

A. Yes.

Q. In accordance with our law, no man can be convicted of a crime on the uncorroborated testimony of an accomplice, even though you do believe that the accomplice is telling the truth. Is that clear to you?

A. Yes.

Q. Now, then, assuming that after listening to the charge of the Court, that the Court instructs you that that is the [fol. 2481] law, and in looking through the evidence and sifting it you were unable to find other evidence of a nature which tends to connect the defendant with the crime, would you hesitate to acquit the defendant?

A. No.

Q. The Court will further charge you that corroboration does not consist of one or more accomplices saying the same thing. One accomplice is no better than a hundred accomplices; is that clear to you?

A. Yes.

Q. So that in searching the evidence, if the Court were to charge you that that is the law, you would not feel that because more than one accomplice has told you the same story, that that is the evidence which is required by law, if you were instructed by the Court that the evidence must be independent of that given by accomplices, no matter how many they are—would you, sir?

Mr. Turkus: It is not a complete definition of the law. It is not adequate.

The Court: Hearing the question, I do not know what it means. Sustained.

Mr. Rosenthal: I respectfully except. If your Honor had heard the question before, then the meaning would be clear to your Honor as to what—

[fol. 2482] The Court: Please do not argue.

Mr. Rosenthal: I respectfully except.

Q. If you were charged by the Court that independent evidence must be of a nature that comes from a source other than that of accomplices, no matter how many, would you follow that instruction, sir?

Mr. Turkus: I object to it. It is not an adequate definition.

The Court: Sustained.

Mr. Rosenthal: Respectfully except.

Q. Do you find any fault—

The Court: I do not know, gentlemen, if you understand the Court's viewpoint. There are so many things that, as points of law, may or may not be embraced in the Court's charge, it is not permissible in examining talesmen to take any and every question of law that the human mind can think of and ask a juryman as to whether he will follow it in the event the Court so charges. I cannot believe that law in this state permits the examination of talesmen to go so far afield. It wears out those who are in the box, makes them wish that they had not been accepted, before the taking of testimony begins. If you can reasonably get this jury assembled and start the testimony rolling, the case won't take long. The Court has to sit here and watch and count [fel. 2483] peremptory challenges, knowing that once the peremptory challenges, on either side, are exhausted, the jury will be very quickly assembled. Up to date, including those who have been accepted tentatively, adding to that the peremptory challenges on both sides, we have had enough to fill this box four times over.

Now, please proceed, and now that you know the Court's point of view, it may possibly expedite. If it does not, the Court will still be patient and see to it that no reversible error is recorded by due exception on the record.

Mr. Rosenthal: May I respectfully except to your Honor directing your remarks to defense counsel, when the District Attorney has taken as much time as all defense counsel put together?

The Court: I said "gentlemen." That includes the District Attorney.

Mr. Turkus: I did not take as much time as the nine of them at all.

The Court: That was plural. I want no argument about it. Please proceed. You are just going to use more time, and you are not going to let the Court lose its head. It won't do it in this case.

By Mr. Rosenthal:

Q. In the event, sir, that it appears that the prosecution offers evidence—I am asking you this because there has been

[fol. 2484] brought out by the District Attorney—in the form of an accomplice, and you are instructed by the Court that no man could be convicted on the uncorroborated testimony of an accomplice, even if you believe the accomplice, and that he could not be convicted unless there were other evidence independent in its source tending to connect the defendant with the crime, would you follow that instruction of law?

A. Yes.

Q. And if you were unable, after looking through the evidence, to find evidence of a character that satisfied you that it was independent in its nature, would you hesitate to acquit the defendant?

A. No.

Q. It may appear that in the wisdom of counsel, myself as attorney for Capone, that the defendant will take the stand. Have you any feeling that because a man is charged with crime that he, the defendant, necessarily would tell you an untruth? Have you any such innate feeling? Do you feel, sir, that the truth from the defendant is just as valuable as the truth from any other source?

A. Yes.

Q. And if the defendant were to take the stand—let me withdraw that and put it this way: You have heard from Mr. Turkus and others the fact explained that at no time does the defendant have to prove his innocence. At all times the People must establish the guilt. With that knowledge and that thought in mind, have you any opinion, sir, that because the defendant takes the stand that the burden would [fol. 2485] shift over to him to prove his innocence?

A. No.

Q. The defendant may also offer proof that at the time this crime is alleged to have been committed, that he was elsewhere, in the form of other witnesses. That is what we call in law an alibi. If such proof were offered, and the Court were to instruct you that under such circumstances, if the alibi witnesses raised a doubt in your mind as to the guilt of the defendant, a reasonable doubt, I should say, in your mind as to the guilt of this defendant, that that reasonable doubt, the same as any other reasonable doubt, must be resolved in his favor and you must acquit, would you follow that law?

A. Yes.

Q. Do I make clear to you the statement that I made?

A. Yes, sir.

Q. The fact that any defendant may know or have met or even been out with some of The People's witnesses, the mere association, without your belief in the fact that the particular defendant participated in the crime, would that prejudice you against him?

A. No.

Q. There are certain police officers, Lieutenant Osnato, Captain Bals, Detective Paddy Meehan, McCarthy, Swift, who may have some association with this case. Do any of those names strike a responsive chord?

A. (No answer.)

Q. The District Attorney has asked you about whether you find fault with the District Attorney who solves the case [fol. 2486] from the inside by using an accomplice. Do you remember that?

A. Yes.

Q. That does not raise the inference in your mind that this particular case has been solved, because some person who calls himself an accomplice has told the District Attorney that these defendants are involved?

A. Only the method.

Q. In other words, the question as to whether or not, in so far as these defendants are concerned, the case has been solved, is one for you to determine; isn't that right? It is for you to determine what force or weight you will give to this man who now calls himself an accomplice of the defendant, testimony, is that right? In doing that, if you are told by the Court that in all cases where accomplice testimony is used that you must, whether you like it or not, view the testimony of that accomplice with suspicion, caution, and wariness before you accept it as true, will you do that?

A. Yes.

Q. And if you are further told by the Court that in viewing the testimony of any witness, whether it be an accomplice or one who allegedly is supplying the independent evidence, that you have a right to take into consideration, among other things, the motive, if any, that the person has in making the statement that he does, what promise has been made to him, for instance, for any crimes that he may have committed for which he does not expect to receive any punishment, and any other fact which will enable you to determine whether or not that person is likely to be tell-

[fol. 2487] ing the truth about the defendants when he testifies, will you do that?

A. Yes.

Q. It is not your impression, sir, or is it your impression, that because a so-called accomplice takes the stand and tells you that he, the accomplice, shot somebody and killed him, and because some policeman goes on the stand and shows that he found the body of that man, and somebody shows that he was shot, that necessarily that particular individual is telling the truth about the defendants? Is that your impression?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Do you understand, sir, that whereas the accomplice may be telling the truth about himself, he may be lying as far as other people are concerned?

A. Yes.

Q. Never having sat on a jury before, do you understand that you are entitled to form your own opinion as to what the evidence is? Is that correct?

A. Yes.

Q. Having formed an opinion, it is your duty to listen to others as to their opinion. You understand that also?

A. Yes.

Q. Having reasoned with your fellow jurymen, if you come to the conclusion that the opinion which you have formed is the correct opinion, and they are unable to reason logically that you are wrong, would you, because of [fol. 2488] your inexperience as a jurymen, lateness of hour, or any other reason, suborn your opinion to those of the others?

Having been asked whether you have any fear or hesitation in coming in with a verdict of Guilty if you were convinced beyond a reasonable doubt of the guilt of the defendant, let me ask you whether or not, in view of the publicity that may have been given to this case, you have the courage and fortitude to come in with a verdict of Not Guilty if you are not convinced beyond a reasonable doubt of the guilt of these defendants. Have you that courage?

A. Yes.

By the Court:

Q. May I ask, was your father in the insurance business?

A. No.

Q. Did you know David Berman?

A. No. We have no relation by the name of Berman.

Q. This man would be about seventy-six.

A. No.

Q. He was in your line of business. Do you know who I mean?

A. No.

Mr. Turkus: Peremptory.

The Court: Why didn't you say that an hour ago? I knew you were going to say it. Call two gentlemen.

(The following talesmen were called and took their places in the jury box: Joseph J. Slonim, 74 Beaumont Street; John J. Dempsey, 2144 East 13th Street.)

Mr. Turkus: I ask the Court to recess for the supper hour.

[fol. 2489] The Court: No. You brought this on yourself. You should have exercised your challenge at the time you decided you were going to. Get a glass of Coca-Cola for Mr. Turkus.

Mr. Turkus: Never mind.

The Court: Get a cup of water.

Mr. Turkus: It is four hours since we have had lunch.

The Court: All right. Take it on the chin.

By Mr. Turkus:

Q. Mr. Slonim, I take it that you have heard a lot of questions here?

A. Right.

Q. Have you heretofore served as a juror in a criminal case?

A. I did.

Q. More than once?

A. Yes, sir.

Q. Was any of the cases recent?

A. I served the early part of this year.

Q. What judge was that?

A. Brancato.

Q. Were any of the lawyers in this case defense lawyers in that case?

A. No, sir.

Q. Do you recall the name of the Assistant District Attorney who prosecuted?

A. No.

Q. Was it a murder case?

A. Yes.

Q. Did the case go to a conclusion?

A. The defendant took the plea before it went to the jury.

Q. You sat in other criminal cases?

A. Yes, sir.

Q. More than two?

A. In every court with the exception of Judge Leibowitz. [fol. 2490] Q. Then you know what it is all about?

A. I do.

Q. You are listed here as an Assistant Vice-President. Is that a corporation?

A. Trust Company.

Q. You have been in the banking business long?

A. Thirty-six years.

Q. It should not be too difficult for you to get over this thing with me very quickly. Does business bring you into contact with firms or individuals in the garment and clothing business?

A. It does.

Q. Does your livelihood as an Assistant Vice-President depend upon the good will of any of those manufacturers?

A. Of all customers.

Q. One of the defense lawyers wants to know if you know Judge Liebowitz.

A. Very well, personal friend.

By the Court:

Q. You are a neighbor?

A. Right.

Q. Down at Manhattan Beach?

A. Manhattan Beach.

Q. You visit at one another's homes?

A. Right.

By Mr. Turkus:

Q. Getting back to this clothing and garment district business, do you know any officials of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. I take it, then, that you have some customers who deposit money with the Manufacturers and manufacture clothing?

[fol. 2491] A. Other wearing apparel.

By the Court:

Q. Mr. Dempsey, I am trying to place you. You know me, don't you?

A. Well, I have seen you before.

Q. Sheepshead Bay?

A. Right.

Q. You were a new man. What business were you in?

A. Lawyers Mortgage Company.

Q. What position did you hold there?

A. Inspector.

Q. That was for Mr. Fair over on—

A. Madison Avenue.

Q. When I knew you, that was downtown?

A. Montague Street.

Q. You were an inspector of buildings for the purpose of appraisals?

A. That is right.

Q. On applications for mortgage loans. When did you retire?

A. About three years.

Q. What section did you cover on your inspections?

A. Brooklyn, Kings only.

Q. All over?

A. And then later on The Bronx and Manhattan.

Q. Did you inspect as to the condition of the premises or as to the appraisal value?

A. Both.

Mr. Barshay: May we take a minute of the Court's time at the bench, Mr. Turkus and myself? We may save a lot of time.

The Court: Come right up.

(Mr. Turkus and Mr. Barshay conferred with the Court at the bench.)

The Court: This is strictly one exception to the rule of [fol. 2492] challenge by consent, but it is to save time. Mr. Slonim is excused by consent of both sides. Right?

Mr. Climenko: That is correct.

Mr. Talley: Yes.

The Court: Call another gentleman to take his seat.

(Henry Gierie, No. 3083, was called and took Seat No. 12 in the jury box.)

Mr. Turkus: (to Mr. Joseph) Send for Mr. Klein to take over.

The Court: Are you actually too tired?

Mr. Turkus: You don't think I am playing a game with you. You know I am under a doctor's care.

The Court: Please, we will have dignity.

Mr. Turkus: Yes, your Honor.

The Court: The Court is displeased at the way the three last examinations were prolonged unnecessarily when the Court was persuaded of what you intended to do, but I will, nevertheless, forgive you for it.

All counsel, everybody, wants an adjournment. But the defendants will remain seated and counsel remain here a few minutes longer.

(To jurors) Gentlemen, kindly be in your place at ten o'clock. Do not discuss the case, let nobody talk to you about it. Keep your minds open. Read nothing. Do not listen to the radio about it.

[fol. 2493] (The jury left the court-room.)

The Court: All other talesmen may go until ten o'clock tomorrow morning.

PHILIP I. NASH, M. D., of 3100 Ocean Parkway, Brooklyn, New York, being duly sworn, testified as follows:

By the Court:

Q. You are the former president of the Kings County Medical Society?

A. I am, your Honor.

Q. And have been for many years the medical head of the Coney Island Hospital?

A. Thirty years.

Y. Have been practicing how many years?

A. Going on forty years, seven years professor of clinical medicine, Long Island College of Medicine.

Q. And are you Medical Assistant to the District Attorney?

A. I am, your Honor.

Q. This afternoon the defendant Capone exhibited what might or might not be interpreted as symptoms of angina, whereupon the court recessed and an ambulance was summoned from the Long Island College Hospital, the surgeon arriving about fifteen minutes later and making his examination. The surgeon has testified that he found the defendant to be normal at the time of his examination in all respects except that he found a certain amount of hypertension, [fol. 2494] which is not unusual in people of his age. Can you state with reasonable certainty whether the defendant under those conditions would or would not at the time of such examination show symptoms of having had an angina attack within the preceding fifteen or twenty minutes?

A. He would, your Honor.

Q. Will you state what those symptoms would be?

A. If his pain was relieved, he would be in the state of collapse. His blood pressure would have dropped from hypertension to hypotension.

Q. That means it would have gone down instead of up?

A. Gone down instead of up, and his heart rate would not necessarily be slower. It may be a little rapid, but the rhythm would be irregular.

Q. Would he be able to appear normal upon examination and to return to court, walk down a flight of stairs and resume the trial?

A. Not after a coronary thrombosis or an angina attack.

Q. How long would the collapsed condition continue?

A. For hours.

Q. For several hours?

A. For several hours.

Q. Dr. Torre was here yesterday following a letter received by him concerning instructions from the Department of Correction. Those instructions were, briefly, that medication was to be given as indicated upon the defendant Capone leaving for the court every morning, but he was not [fol. 2495] permitted to carry any on his person for discretionary use in court. When Dr. Torre was here I requested him to get in touch with Commissioner Goldman and ask for the authority to provide sensibly against any contingency by providing the defendant Capone each morning

with a sufficient quantity of medication to be used in the defendant's discretion in event of any real or imagined attack. I ask you now if you will be so good as to get in touch with Dr. Torre at once and urge him to press the Commissioner for favorable action upon that request, so that a reasonable amount of medication may be provided to the defendant to carry on his person tomorrow morning and thereafter each morning. Will you do that, Doctor?

A. I will, your Honor.

The Court: Thank you.

Mr. Rosenthal: May I ask the doctor a question?

The Court: Yes.

By Mr. Rosenthal:

Q. Would you take the responsibility that this man does not need medication, Doctor?

A. That he does not need medication?

Q. Yes.

A. I did not say—

Q. I am asking you will you accept the responsibility that he does not need medication? That is the only question I want to ask you.

A. I would not say that you did not or I did not or any- [fol. 2496] body else. No, I would not say that of anyone in the court-room.

Mr. Rosenthal: That is all I want to ask you, Doctor.

By the Court:

Q. Did you, upon your examination of the defendant last week—I think it was Thursday, when you had him in the medical room and gave him a heart and coronary examination, did you find any evidence whatever of angina pectoris or coronary disease?

A. I did not.

Mr. Rosenthal: May I ask him a question?

By Mr. Rosenthal:

Q. Did you advise the Court that the Court better not sit late hours with this defendant, that it would be better that this man was not put under a strain of late hours?

The Court: He based that upon the hospital report.

Mr. Rosenthal: I ask the doctor——

The Court: I am telling you.

Mr. Rosenthal: If I have no right, I won't ask any questions.

The Court: The doctor gave such advice to the Court in chambers, in chambers, in the absence of the press.

Mr. Rosenthal: I am asking now that the Court has made it public.

[fol. 2497] The Court: Don't interrupt the Court. And you know as well as the Court what was said, and you are not going to put the Court on the spot. Will you please remain silent while the Court is addressing you? The doctor gave that advice upon your calling his attention to your information that upon an electrocardiogram there was a report of coronary trouble, and you know that as well as I do, and the Court——

Mr. Rosenthal: In view of the fact that we have——

The Court: The Court has done its best to be conscientious in this decision, but will not be fooled by any apparently sham attacks, particularly in view of the sham that was pulled before the Court with tablets which were counted by the clerk one night last week, which was a quadruple dose of luminal producing a luminal toxic effect, which was pronounced in the press as being a cardiac attack.

The Court now recesses.

Mr. Rosenthal: Whatever this man took, he took under the instruction of physicians over whom he has no control.

The Court: I won't quarrel with you. I strongly suspect that he was handed the medication.

Mr. Rosenthal: There is no basis for that.

The Court: Because it is denied at the jail that it was given by the physicians. They strongly deny——

[fol. 2498] Mr. Rosenthal: May I ask——

The Court: You will be silent. He had enough of the medication to kill several persons.

Mr. Rosenthal: May I ask the doctor——

The Court: You may not ask anything now. You will come to order, because I strongly suspect a trick, and all the Court wants to do here is to see that the Court is not put on the spot with false reports and misleading reports in the press as to the Court's sincerity and desire to act as an impartial judge, but not be fooled.

Mr. Rosenthal: There is no basis——

The Court: The Court has recessed.

The defendants are remanded.

Mr. Rosenthal: And I except to it.

(An adjournment was thereupon taken to Thursday, October 16, 1941, at 10:00 A. M.)

[fol. 2499]

Brooklyn, N. Y., October 16, 1941.

Trial Resumed

By Mr. Turkus:

Q. Mr. Gierie, is that the pronunciation?

A. Yes, sir.

Q. Do you reside at 3717 Avenue R?

A. Yes, sir.

Q. You are listed as an assistant superintendent. Is that with the City of New York?

A. The Guaranty Trust Company of New York.

Q. Has that been your business for a number of years?

A. All my life.

Q. I take it while you were seated with the other prospective jurors you heard me address certain questions about the Brownsville and the East New York sections and the garment and the clothing industries?

A. Yes, sir.

Q. And the clothing truckers?

A. Yes, sir.

Q. Is there anything about those items that the District Attorney should know?

A. No—I know someone in East New York, a policeman; at the present time he is out on Empire Boulevard.

Q. He is a detective or a patrolman?

A. Patrolman, Gierie. He does not figure in the case at all.

Q. Have you heretofore served as a juror at any time?

A. Yes, sir.

Q. In the Supreme Court?

A. In the County Court.

Q. On criminal cases?

A. Yes, sir.

[fol. 2500] Q. Was it since January 1, 1940?

A. Yes, sir.

Q. Do you remember the name of the Judge?

A. Judge Taylor.

Q. Were any lawyers in the case present who are now in court?

A. No, sir.

Q. Did you actually serve on the jury?

A. No, sir.

Q. Were you examined by me?

A. Yes, sir.

Q. Did I say you were satisfactory?

A. Yes, sir.

By Mr. Turkus:

Q. Mr. Dempsey, what is your business?

A. Retired.

Q. What was your business?

A. Lawyers Mortgage Company, inspector.

Q. You must speak up loudly, so we can get it on the record. Do you live in East 13th Street?

A. Yes, sir.

Q. Is that in Flatbush?

A. They call it Sheepshead Bay.

Q. Have you lived there for a number of years?

A. In that section about fifteen years.

Q. Have you been retired a number of years?

A. About three.

Q. Are you engaged in any occupation whatever?

A. No, sir.

Q. How long were you with the Mortgage Company?

A. Thirty-two years.

Q. While with the Mortgage Company, what work did you do? Was it appraisal?

A. Inspecting buildings, investigating.

Q. Did your business bring you in contact with the Brownville or East New York section?

A. All over the city.

Q. Is there anything that has come to your attention [fol. 2501] while you had business for the Title Company that either by way of hearsay or information you heard anything about the defendants?

A. No, sir.

Q. Or about any of the names I mentioned?

A. No, sir.

Q. Did you hear the examination with regard to accomplice testimony?

A. Yes, sir.

Q. Do you have any different feeling than any other juror?

A. No, sir.

Q. Will you if accepted as a juror devote your mental faculties to finding out does the accomplice speak the truth about the defendants at the bar and is there other evidence tending to connect them with the commission of the crime?

A. I don't get that.

Q. Part of the testimony in this case will come from one who is known in law as an accomplice.

A. Yes, sir.

Q. Do you understand an accomplice is one who is himself implicated in the commission of the crime?

A. Yes, sir.

Q. I say to you that part of the testimony in the State's case will emanate from such source, will come from one of the men who was in on the commission of this crime.

A. Yes, sir.

Q. I want to know whether you have any bias or prejudice either against the prosecutor of the county, Judge O'Dwyer, or against the prosecution of an indictment wherein the testimony of one who himself worked in a group or combination to kill the victim named in the indictment, if you have any fault to find or any prejudice against that kind of a prosecution.

[fol. 2502] A. No, sir.

Q. Don't take my word for it that the case was broken from the inside. That will be your job to find out, if that is not so when you hear the evidence. Let me tell you this: Are you prepared to give these defendants everything the law of the land says they shall have, no more and no less?

A. Yes, sir.

Q. That is our job. Our job is prosecutor, your job is to determine the question of guilt, giving the defendants everything they are entitled to, certainly not less, obviously not more?

A. Yes, sir.

Q. After hearing all of the evidence in the case, if you have a reasonable doubt, you will say it, I am sure?

A. Yes, sir.

Q. But if you are satisfied beyond a reasonable doubt, when you hear the evidence, that Judge O'Dwyer will present in this court, will you have any fear or will you hesitate to render that kind of a verdict which reflects the finding of guilt?

A. No, sir.

Q. Is there anything I should know about your qualifications to sit on this jury?

A. Well, I would like to have you ask me questions personally if I am not prejudiced.

Q. Have you a prejudice against the defendants?

A. I have no prejudice against them; I think I can give them a square deal, as far as the man in jail is concerned, but I cannot get out of my mind that it will only end one way, the case.

[fol. 2503] Mr. Barshay: I will challenge him without question.

The Court: Try the challenge.

JOHN J. DEMPSEY, residing at 2144 East 13th Street, Brooklyn, New York, sworn on the challenge.

By Mr. Turkus:

Q. When you were seated in Seat No. 12 in the jury box you made certain responses, when I asked you whether there was anything I should know, and you told me something about prejudice.

A. Yes, sir.

Q. I do not want to repeat my questions, nor do I want to repeat your answer, but would you say the same thing now that you are under oath?

A. Yes, sir.

Mr. Climenko: No questions, your Honor, from the defense.

The Court: Challenge sustained.

Mr. Talley: Will your Honor see me at the bench for a moment in regard to the selection of the jury? It is rather important.

The Court: Yes.

(All counsel and Mr. Turkus appear before the bench and confer without the hearing of the panel.)

By the Court:

Q. Mr. Gierie, you are an assistant superintendent?

A. Yes, sir.

Q. What does that mean?

A. Taking care of all the property the Guaranty Trust [fol. 2504] Company owns and occupies, and as far as alterations are concerned, and taking care of all the help.

Q. You are the man that has charge of the buildings?

A. One of them; the superintendent and my boss has charge of all buildings.

Q. Are you in one of the branches?

A. I am downtown, in the main office. We take care of the Fifth Avenue office, too, and our other office at 60th Street, and we have a group of buildings downtown, about seven or eight.

Q. That would be just about the same as Superintendent of Public Buildings in Brooklyn, the Deputy Superintendent in charge of different buildings?

A. Yes, sir.

Q. You are not connected with the banking business?

A. No, sir, they feed me, that is about all.

Q. You don't object to that?

A. No, sir.

Q. When you were questioned—this is just yes or no—when you were questioned in the case several minutes ago as to whether or not you knew certain names, did these names register in your mind?

A. Yes, sir.

Mr. Barshay: We challenge.

The Court: Try the challenge.

HENRY GIERIE, residing at 3717 Avenue R, Brooklyn, New York, was sworn on the challenge.

By Mr. Talley:

Q. You were asked some questions by His Honor?

A. Yes, sir.

[fol. 2505] Q. Before you were sworn?

A. Yes, sir.

Q. Now, having been sworn, if you were asked the same questions by the Court or by counsel, would your answers be the same?

A. Yes, sir, the same.

By Mr. Turkus:

Q. Could you, if accepted on this jury, render justice by your verdict and give the defendants every benefit which the law of the land says they shall have?

A. Yes, sir.

Q. Can you decide this case justly and impartially to both sides?

A. Yes, sir.

The Court: Well, the Court, of course, has to divorce the record and consult its own recollection. My notion is there might be implied bias. It is reasonable to assume there may one develop. He says there is one present now, and therefore this man should be executed. I sustain the challenge.

(By direction of the Court, the following talesmen were then called: Moe Hiller, No. 3093; James A. Long, No. 3088.)

MOE HILLER, was then examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You reside in President Street?

A. Yes, sir.

Q. You look somewhat familiar to me. Have we met as juror and prosecutor before?

A. Yes, sir.

Q. Was Mr. Rosenthal also involved in the case where [fol. 2506] you were involved as a prospective juror?

A. I have a slight recollection he was; I am not positive.

Q. That has been since Judge O'Dwyer was District Attorney?

A. Yes, sir.

Q. Do you remember the names I mentioned in the voir dire?

A. Yes, sir.

Q. They call it the voir dire. That is a French term. It means to speak the truth. I have a recollection of seeing this man as a juror.

By the Court:

Q. Do you live up near Albany Avenue?

A. No, sir, between New York and Nostrand.

Q. 1239 President Street?

A. Yes, sir.

Q. That is the south edge, what is known as Spotless Town?

A. That is what they term it on the next block. I believe the next block is Spotless Town.

Q. What is your business?

A. I am in the wholesale line.

Q. What line?

A. Ribbons.

Q. Do you belong to the Parkway Democratic Club?

A. No, sir.

By Mr. Turkus:

Q. The case in which Mr. Rosenthal was counsel, was that recently? Do you remember what month?

A. I think it was the early part of this year.

Q. Was I the prosecutor in the case?

A. Yes, sir.

[fol. 2507] Q. Are any of those names familiar to you that we discussed with the prospective jurymen?

A. No, sir.

Q. None are familiar to you at all?

A. No, sir—you mean names of any particular case?

Q. Yes.

A. No, sir.

Q. Were there other names, like Abbandando, the Dasher?

A. I don't remember the names you mentioned.

Q. I think you got as far as you are now, you were examined by both the prosecutor and the defense?

A. Yes, sir.

Q. And did I peremptorily challenge you?

A. I think you did.

Mr. Turkus: Then we will not waste any more time.

By Mr. Turkus:

Q. Mr. Long, you reside in the Park Slope?

A. Yes, sir.

Q. Have you lived in that district a number of years?

A. Over twenty-four years.

Q. You are listed as a secretary. By whom are you employed?

A. Horace Butler.

Q. Is he a lawyer?

A. An architect.

Q. Have you been with him a number of years?

A. Sixteen.

Q. You heard the questions I addressed to the other jurymen. Is there anything you know now about Brownsville or East New York or the garment trade or garment industry?

A. No.

Q. Do you feel the same as the other prospective jurors who have been accepted did, about a complice testimony?

A. Yes, sir.

[fol. 2508] Q. If accepted in this case, will you give the defendants at the bar every legal right they are supposed [fol. 2509] to have? The judge will tell you they are to be given the benefit of every right in our law of the land that inures to the defendants.

A. Yes, sir.

Q. If, after hearing all the evidence in the case, you have a reasonable doubt, you will say so by your verdict?

A. Yes, sir.

Q. After you hear all the evidence in the case, if you are convinced beyond a reasonable doubt that these three men are guilty participants in the murder of Rosen and that they each played a part in the combination or group as set forth by the witnesses that are produced, will you say it in your verdict without fear or hesitation?

A. Yes, sir.

Q. Now, is there anything we should know about which disqualifies your sitting as a juror in this case?

A. I think I am prejudiced.

Mr. Barshay: I challenge the talesman.

Mr. Turkus: Let me finish with him.

Q. Is there something that you have read in the newspapers?

A. I have read in the newspapers, but not the entire articles.

Q. Is there anything you have read in the newspapers about these defendants that sticks in your memory?

A. No, sir.

Q. Are there things you have heard in court which prejudice you?

A. No, sir.

The Court: Is it a desire to get back to your work?
[fol. 2510] A. No, sir.

Q. We all have our jobs to play in this world. I have the job of being prosecutor. I have got to present the evidence of the People of the State of New York in criminal cases; that is my job.

Mr. Barshay: I object.

The Court: A jury has to be found—gentlemen have to be found who are willing to give service, so please have that in mind and consult the actual condition of your mind only in giving answers to each question.

The Talesman: That is what I am doing.

By Mr. Turkus:

Q. You did say to me that you would give the benefit to these defendants of every law of the land which was charged you they should have?

A. Yes, sir.

Q. If at the conclusion of the case, if you have a reasonable doubt, after hearing all the evidence, you would give them the benefit of that doubt?

A. Yes, sir.

Q. You did say that if you found they were guilty beyond a reasonable doubt you would say that?

A. Yes, sir.

Q. Wherever you got this prejudice from, can you take that prejudice and lay it aside and decide this case on the evidence you hear in the court-room?

A. I don't think so.

Mr. Barshay: I challenge the talesman.

The Court: Try the challenge.

[fol. 2511] (JAMES A. LONG, residing at 466 Fifteenth Street, Brooklyn, New York, was sworn on the challenge.)

By the Court:

Q. That is between 6th and 7th Avenues?

A. 8th and 9th.

Q. Do you belong to the 12th Assembly District Democratic Club?

A. I belong to a club.

Q. Have you heard any talk there about this?

A. No, sir.

Q. What club is that?

A. The Ancient Order of Hibernians, the same that Mr. Rooney and Mr. O'Dwyer belong to.

Q. They are officers of the club?

A. No, sir, they are members.

Q. You would not let that influence you?

A. No, sir.

Q. You would not convict a man to accommodate some officers of a club?

A. No, sir.

Q. Do you know Mr. Cuff?

A. I do.

Q. Did you meet him at the Half Moon Hotel?

A. No, sir.

Q. The dinner?

A. No, sir, I was not there; I did not go to that.

Q. Do you remember the dinner?

A. Yes, sir.

By Mr. Rosenthal:

Q. Now that you have been sworn, would you make the same answers as you made when you were sitting in the jury box, to Mr. Turkus?

A. Yes, sir.

By Mr. Turkus:

Q. The answers you made to the questions of Judge Taylor, [fol. 2512] or, if those questions were to be repeated would you make the same answers now?

A. The same answers.

The Court: Some of the answers given in the box were not audible.

By the Court:

Q. Will you be able to put aside every notion you have in your head that will work against any of the defendants and give the defendants a square trial on the evidence?

A. No, sir, I don't think so.

The Court: Challenge sustained.

MOE HELLER, a talesman, was then examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Are you sure, Mr. Heller, there was a peremptory challenge by me in the case where Mr. Rosenthal was?

A. Quite sure.

Mr. Turkus: I will exercise a peremptory challenge now. There is no use of wasting time.

[fol. 2513] (Examination of CLEMENT S. JACOBUS--not sworn.)

By Mr. Turkus:

Q. Mr. Jacobus, do you reside on Clinton Avenue?

A. Yes, sir.

Q. Are you a real estate broker?

A. Yes, sir.

Q. In business for yourself?

A. Yes, sir.

Q. Where is your office?

A. No. 26 Court Street.

Q. Did you hear the question in regard to the clothing garment center in Manhattan, and about the Brownsville and East New York section in Brooklyn, and the waterfront?

A. Yes, sir.

Q. Have you heretofore served on any jury?

A. Yes, sir.

Q. Has it been in this court?

A. I do not recall the name or what year—I was not on the jury, though.

Q. You never reached the jury box?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Do you know any of the nine lawyers in the case or anyone in their office?

A. No, sir.

Q. Do you know any lawyer who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you know Mr. Barshay, who says he has an office in the building where you have your office?

A. I do not know him.

[fol. 2514] Q. There are just a few simple things I want to know about, and we can go along very hurriedly. Will you take the law exclusively from Judge Taylor in its every aspect?

A. Yes, sir.

Q. Judge Taylor tells the jury what the law is, and the jury applies the law to the evidence in the case.

A. Yes, sir.

Q. Will you take the law Judge Taylor gives you with common sense, and apply it to the facts in this case?

A. Yes, sir.

Q. After hearing all the evidence in the case, if you have a reasonable doubt about guilty participation in the commission of this murder charged in the indictment by all the defendants or any one of them, you will give the defendants the benefit of that reasonable doubt?

A. Yes, sir.

Q. By the same token, if Judge O'Dwyer presents the evidence in this case—you do not form any opinion about what the evidence is from anything you hear in this voir dire—either by the defendants or the District Attorney—you only form your opinion when you get all of the evidence. After you get it, if you are satisfied beyond a reasonable doubt that these three defendants are guilty of murder in the first degree and that each one took a part in this combination or group to kill the victim named in the indictment—that is what you hear here in open court—will you say so?

A. Yes, sir.

Q. With respect to the accomplice part of the testimony in this case, which will come from accomplices—and if you have any prejudice, you just let me know and I will go along [fol. 2515] quickly, and if you have none, let me know that too. Now, will you take all the tests the Judge gives you to find out does this accomplice in the case speak the truth about the part that each of these defendants played in the

group or combination murder of the victim named in the indictment?

A. Yes, sir.

Q. And do you understand that is the reason you apply the test, to find out does he speak the truth about their participation in this matter, and is there other evidence aside from the testimony of the accomplice which tends to connect these defendants and every one of them with the commission of the murder?

A. Yes, sir.

Q. And will you apply your mental faculties to that determination?

A. Yes, sir.

Q. Now with regard to another point brought out by one of — defense lawyers, that his client has been convicted of other crimes and is serving now a jail term, would you relax or deviate from your duty as a juror in this case on account of that?

A. No.

Q. Is there anything that I should know as prosecutor which would affect your qualifications to sit as a juror and render a verdict in consonance with justice?

A. No, sir, I do not know of anything.

(John J. Dunphy was then questioned by Mr. Turkus.)

Q. You reside up near the Park Slope?

A. Yes, sir.

[fol. 2516] Q. Have you lived in that neighborhood for a number of years?

A. About six years.

Q. Prior to that where did you live?

A. In Flatbush.

Q. You are listed as treasurer.

A. Of a shipping company. They are forwarders—custom truckers.

Q. Does your work keep you inside of the office?

A. Yes, sir.

Q. You handle the checks and the money and such things?

A. Yes.

Q. Is there anything the prosecution should know about any possible contact or connection with people in the garment or clothing industry or clothing trucking industry?

A. No, sir.

Q. Or in connection with Brownsville or East New York section?

A. No, sir.

Q. Or with Albert Anastasia or anybody on the Brooklyn waterfront whose names have been mentioned?

A. No, sir.

Q. Have you ever sat as a juror in any criminal case?

A. No, sir.

Q. Will you take the law implicitly from the trial judge?

A. Yes, sir.

Q. And will you, with common sense and understanding, apply the law to the case at bar?

A. Yes, sir.

(Talesman Jacobus was then interrogated by the Court.)

Q. How long have you lived there?

A. Ever since I came to Brooklyn in 1909. I lived at 92 Gates Avenue for ten years.

[fol. 2517] Q. That is between Grand and Gates?

A. On the corner of St. James Place.

Q. How long have you been in the real estate brokerage business?

A. Since 1938.

Q. And before that?

A. I was with the Lawyers Mortgage Company for twenty years.

Q. On Liberty Street?

A. On Montague Street.

Q. The Brooklyn office?

A. Yes, sir.

Q. For how many years?

A. Twenty-six, about.

Q. You came from what town?

A. Springfield, Massachusetts.

Q. You are not a friend of Professor Jacobus of the Theological Seminary?

A. No, sir.

(Talesman Dunphy was further interrogated by Mr. Turkus as to his qualifications.)

Q. Mr. Dunphy, have you heard the discussion with the jurors who have been accepted, in connection with accomplice testimony?

A. Yes, sir.

Q. Do you understand it is not whether you like or dislike accomplice testimony, it is whether you believe he speaks the truth as to the part each man played in the commission of the crime?

A. Yes, sir.

Q. And whether you like or dislike the accomplice, if you believe his story and you believe, *under the instructions of law*, it has been corroborated by other evidence which tends to connect the defendants with the commission of the crime, [fol. 2518] will you find the defendants guilty of murder in the first degree—you do not acquit defendants because you do not like accomplices, you understand that?

A. Yes, sir.

Q. Is there any question I put to the other talesmen who have been accepted that you would answer any differently?

A. I do not know of any.

Q. Is there any reason why you cannot give these defendants at the bar of justice every legal right that the law of the land says they should have?

A. No, sir.

Q. And after you give them every legal right they have, and after you hear all of the evidence in the case, if then you have a reasonable doubt about their guilt, will you say so?

A. Yes, sir.

Q. And, on the other hand, if after hearing all of the evidence in the case that Judge O'Dwyer brings into this court room, you are satisfied of their guilt of murder in the first degree beyond a reasonable doubt, will you say that in your verdict without any fear or hesitation?

A. Yes, sir.

Q. Is there anything the prosecutor of this county should know about your qualifications to render a verdict in consonance with justice in this case?

A. No, sir.

(Mr. Jacobus was then interrogated by Mr. Talley.)

Q. Mr. Jacobus, prior to your being called I think you said that you sat, in the spring of this year, as a juror. Did you sit as a juror in a criminal case?

A. No, no criminal case.

[fol. 2519] Q. You did sit as a juror in a civil case?

A. Yes.

Q. A case of damage for injuries?

A. Yes, sir.

Q. The Court will charge you that in a criminal case the rules are essentially different than those prevailing in a civil court. When I say "rules", I mean the law governing the conduct of a criminal case, and the rights that are accorded every person charged with crime under our American system of law—they are quite different. You will be *instructed by the learned Court*, if this case goes to the jury, as to what those principles are. The Court will instruct you that every defendant is presumed to be innocent until his guilt is proven. A defendant charged with a crime in an indictment, which is simply an accusation in writing, is not required to prove his innocence, but, on the contrary, the People, when they bring in an indictment, undertake the task to prove that guilt. You understand that?

A. Yes, sir.

Q. Will you require the People in this case to prove the guilt of these defendants before you bring in a verdict of "Guilty" against them?

A. Yes, sir.

Q. And the law goes further in this particular, not to shield the guilty, but to protect the innocent—that is the basis of these rules of criminal law—if the Court charges you that it is the law that not only must guilt be proven to the satisfaction of the jury, but it must be proven beyond a reasonable doubt—and the Court will charge you what reasonable doubt is—will you give the defendant, or the defendants, the benefit of such doubt when you come to consider the evidence in this case?

A. Yes, sir.

Q. You have not any doubt in your mind you can do that now?

A. No, sir.

Q. Some testimony—we do not know what it is going to be—we of the defense—but the District Attorney has indicated by his questions that certain accomplices, so-called, will be presented here and their evidence given before you; they will testify, we can rightfully assume, of their participation in this crime charged in this indictment. The Court will instruct you that it is the law that the testimony of such person, who himself accuses himself of the crime, and then testifies as to the participation of others, must be scrutinized with great care and caution to see whether they are telling the truth, to see whether, in the giving of their testimony, they may not be actuated by motives of self-

preservation, looking out for themselves, disregarding the truth and the rights of others. Now, if such testimony is presented, will you agree with me now that you will regard such testimony with the care and suspicion and caution that the law says a jurymen should regard that type of testimony?

A. Yes, sir.

Q. Have you read anything about this case or any of these defendants, or anything connected directly or indirectly with the matters we are here to try?

[fol. 2521] A. I have seen names in the paper, but I do not know anything about the case, I have not read enough.

Q. You read something about some matters that are associated with this indictment in this case?

A. I have seen names in the paper.

Q. Might I ask you what paper you ordinarily read?

A. The Tribune and the Sun.

Q. When you can buy them on the stand?

A. I buy them.

Q. You have not bought them the last couple of nights?

A. No, sir.

Q. Did you read any articles in the Daily Mirror?

A. No, sir.

Q. Did you read in the Journal-American the story of the life of Judge O'Dwyer?

A. No, sir.

Q. Did you discuss this case of these defendants with anybody?

A. Only in connection—

Q. Since you have been called to the jury room?

A. Yes, sir.

[fol. 2522] By Mr. Talley:

Q. Did you form any impression, Mr. Jacobus, about any of these defendants, with respect to their guilt or innocence?

A. No, sir.

Q. Or with respect to their character and reputation?

A. No, sir.

Mr. Turkus: I object to the question whether the man has formed any opinion as to their character or reputation.

The Court: Objection overruled.

A. I have seen their names in the papers.

Q. Is that vague or definite?

A. Vague.

By Mr. Talley:

Q. It has left an impression in your mind about them or some of them, hasn't it?

A. Yes.

Q. Is that impression you have about them or any of them an unfavorable impression?

A. Yes, sir, it is.

Q. Is that impression which you have formed one that you would require some evidence in this case to dispel?

Mr. Turkus: I object, because character evidence is in a different category.

The Court: Yes.

Mr. Talley: I am not speaking of character evidence.

Mr. Turkus: That is what the juror is speaking of.

[fol. 2523] The Court: It is a difficult point to rule on. I have ruled on it before in this case.

By the Court:

Q. Supposing the Court should charge you not to give any attention to it, would you be able to lay it aside?

A. Yes, sir.

Q. And to decide the case on the evidence?

A. Yes, sir.

Q. And not be influenced by it in any way?

A. No, sir.

Q. And not require any evidence to remove it?

A. No, sir.

Q. You cannot put a thing out of your mind, but you can disregard it?

A. What the evidence proves to me.

Q. You are supposed to decide the case fairly upon the evidence, because the scales of justice must be evenly balanced.

Mr. Turkus: He may take the People's evidence.

Q. Could you lay it aside entirely and try the case upon the evidence alone?

A. Yes, sir.

By Mr. Talley:

Q. If the evidence was such, you could dispel that impression and put it aside?

A. Yes, sir.

Q. And the converse of that is, if the evidence is not present, you would go in the jury box with that impression on your mind? That is the exact situation, isn't it?

Mr. Turkus: Objected to as leading and suggestive.

The Court: It is obvious you cannot put a thing out of mind at will.

By Mr. Talley:

[fol. 2524] Q. Let us speak as plainly as language will permit. If you are accepted as a juror in this case, you will begin consideration of the case with an unfavorable impression in your mind about these defendants or some of them. That is true, isn't it.

A. Yes.

Q. Before that impression is removed something will have to transpire in this court-room, will it not? What I mean is some evidence will have to be given?

Mr. Turkus: I object. That is an ambiguous question.

The Court: Judge Talley's examination of the juror is quite impressive; that is very much to the point. I think it is clear that Judge Talley means to abstractly obtain an unfavorable impression. It is in reference to whether or not he can disregard it and lay it aside. The objection is overruled.

Q. (Question repeated by the reporter.)

A. Yes, sir.

Q. To get rid of that impression, you would expect such evidence to come from the defendants, wouldn't you?

A. Yes, sir.

Q. And unless such evidence was produced, you could not disregard the impression that you have now as you are talking to me?

A. No, I have that impression.

Mr. Talley: I challenge for implied bias.

The Court: Try the challenge.

(CLEMENT S. JACOBUS, residing at 464 Clinton Avenue, Brooklyn, New York, was sworn on the challenge.)

[fol. 2525] By Mr. Talley:

Q. Before you were sworn, you answered certain questions put to you by me?

A. Yes, sir.

Q. Now that you are sworn, if I asked you the same questions, would your answers be the same?

A. Yes, sir.

By Mr. Rosenthal:

Q. You understood Judge Talley when he asked you whether the impression you have in your mind would take some evidence on the part of the defendants in this case to remove?

A. To disprove?

Q. Yes, to remove.

A. Yes, sir.

By Mr. Turkus:

Q. Did I understand you correctly when you discussed the proposition with Judge Talley that you understood that impression goes to character and reputation?

Mr. Climenko: I object. It assumes a state of facts not in the question.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. Yes, sir.

By the Court:

Q. Have you formed any opinion as to whether or not the defendants or any of them are guilty of this specific alleged crime?

A. I have an unfavorable——

The Court: Repeat the question.

[fol. 2526] Q. (Question repeated by the reporter.)

A. I have not formed any opinion; I have an unfavorable bearing in my mind from the headlines I have seen in the paper, that is all.

Q. And you told us that was vague?

A. Yes, sir.

Q. You told us that while it could not be dispelled from your mind other than by evidence, you could and would lay it aside and disregard it?

The Court: You know a judge may or may not have inside knowledge of the facts in the case, and he is disqualified, because he has to be fair. Now, a man of common intelligence may or may not be able to measure up to that moral requirement to disregard impressions and decide on the evidence in a case. The question is, are you able to do so?

The Witness: The impression is not so deep I could not do that.

Q. Will you do it?

A. Yes, sir.

The Court: Challenge overruled.

Mr. Talley: Exception to all counsel for the defendant.

(Mr. Jacobus steps back in the jury box.)

(Mr. Jacobus is interrogated from the jury box by Mr. Talley.)

By Mr. Talley:

Q. Mr. Jacobus, despite the little examination we have [fol. 2527] had here, it would take evidence to remove this impression from your mind?

Mr. Turkus: I object. That has been determined.

The Court: Sustained. That has been tried and disposed of. No more questions on that point by any counsel.

Q. Are you acquainted with Judge O'Dwyer or any members of his staff?

A. No, sir.

Q. Are you taking any part or do you contemplate taking any part in the campaign, on one side or the other?

A. No, sir.

Q. Outside of the matters that have been inquired into, do you know of any reason why you cannot serve as a fair and impartial juror in this case other than what you have indicated?

A. I don't know of any.

Q. Do you think, despite what you have read in the newspapers, you can judge this case impartially and without prejudice or bias?

Mr. Turkus: I object to that as having been already determined.

The Court: Objection sustained.

Mr. Talley: That is not the same question.

The Court: The Court has ruled.

Mr. Talley: I take exception.

Q. I did not hear Mr. Jacobus in his statement as to what his business was. May I ask you that question again?

[fol. 2528] A. Real estate broker.

Q. Operating in Brooklyn or in Manhattan?

A. In Brooklyn.

Q. Where is your office?

A. 26 Court Street.

Q. Are you engaged in business on your own account or are you associated with someone?

A. On my own account.

Q. Do you buy and sell real estate or do you rent it or have charge of real estate?

A. A little bit of all.

Q. Have you any friends on the Police Department, or close associates?

A. No, sir.

Q. Any member of your family in the Police Department?

A. No, sir.

By the Court:

Q. You are a member of the Hill Association?

A. Yes, sir.

Q. Has there been any talk there about Judge O'Dwyer's investigation?

A. I don't think they had any meeting; I have not had any notice of a meeting.

By Mr. Talley:

Q. Have you heard any political talks on the radio in connection with this campaign?

A. No.

(Mr. Dunphy was then interrogated as to his qualifications by Mr. Talley.)

By Mr. Talley:

Q. Have you read anything about this case?

A. Yes, sir, I have.

Q. Have you formed any impression about this case or [fol. 2529] about any of the defendants as a result of your reading?

A. Just from reading the newspaper I have sort of an unfavorable opinion of these defendants.

Q. That opinion goes to the question of their guilt or innocence?

A. I should say so.

Q. Would that require some evidence in this case, if you are accepted as a juror, to remove that impression you have about them?

A. Yes, sir, it would.

Q. You do not think you could remove it unless you heard evidence, to take it out of your mind?

A. Yes, sir, that is right.

Mr. Talley: This juror is challenged for implied bias.

The Court: Try the challenge.

(JOHN J. DUNPHY, residing at 406 St. Johns Place, Brooklyn, New York, was sworn on the challenge.)

By Mr. Talley:

Q. If I asked you the same questions that I inquired about when you sat in the jury box, now that you are sworn, would your answers be the same?

A. Yes, sir.

Q. Is it your feeling that you could not lay that impression aside which you have formed with respect to the guilt or innocence of these defendants?

A. Unless I had the evidence to offset that opinion.

Q. You could not lay it aside?

A. I should not say so.

[fol. 2530] By Mr. Rosenthal:

Q. You have sat in court and heard the various instructions given to prospective jurors as to the law?

A. Yes, sir.

Q. You were listening carefully and heard those various instructions?

A. Yes, sir.

Q. Notwithstanding the fact that you understand that law given from the Court and what those different principles are as to the presumption of innocence, reasonable doubt, and all those things, you make the statement conscientiously, that you made to Judge Talley?

A. Yes, sir.

Q. So that the impression you now have, or opinion which you have of or concerning some of the defendants is of such a nature that it will take evidence on their part to remove it before you would be able to lay aside the impression or opinion which you formed. Is that a correct statement of fact?

A. Yes, sir, that is so.

Q. This statement is made by you, notwithstanding the fact that you have been told that the defendants need at no time prove their innocence?

A. Yes, sir.

Q. That at all times it is incumbent upon the People to establish their guilt beyond a reasonable doubt?

A. Yes, sir.

Q. But notwithstanding that, your impression, formed in your mind is of a nature that it will take some evidence upon the part of the defendants before you will remove it from your mind?

A. Yes, sir.

[fol. 2531] Q. That impression which you have you cannot lay aside unless the defendants bring forth such evidence to your satisfaction; is that correct?

A. Yes, sir.

By Mr. Turkus:

Q. Have you ever sat as a juror before? I believe you said no.

A. That is right.

Q. There are instructions of law—— Did you ever sit as a juror in any case at all, in any type of litigation?

A. In just a minor case in the Magistrate's Court some years ago.

Q. You mean the Municipal Court—they do not have juries in the Magistrate's Court.

A. It was in the minor court.

Q. Which would be the Municipal Court?

A. Yes, sir.

Q. What papers do you usually read?

A. The *Times* and the *Sun*; once in a while I run across a type of news in some other paper, but I buy those two regularly.

Q. So that the impression you have stated to counsel has been formed from reading the *Times* and the *Sun*?

A. Yes, sir.

Q. And no other paper?

A. Well, I have stopped to get a shine or something like that, and I might pick up the *News* and read it, or some other paper.

Q. That would be by mere casual reading?

A. Yes, sir.

Q. Casual reading?

A. Yes, sir.

[fol. 2532] Q. From any of that reading you've done so far, do you know any of the alleged facts in this case?

A. No, sir, I don't know any of the facts.

Q. As you are sitting there now, can you remember one newspaper that reported the murder?

Mr. Barshay: I object.

The Court: Objection overruled.

A. No.

By the Court:

Q. Do you recall now the person who was alleged to have been killed?

A. Yes, Rosen.

By Mr. Turkus:

Q. You have heard that in court?

A. I heard that in court, and I would say in the paper, but I did not recall until I heard it here.

Q. What I am trying to find out is, isn't this the situation, that whatever you have read is so hazy in your mind

you do not know when it happened, how it happened, or how it is alleged to have happened?

Mr. Barshay: I object to the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. That is true, yes, sir.

By the Court:

Q. Does your impression from the newspaper go any [fol. 2533] further than the fact that the defendants have been indicted and are accused of the murder of Rosen?

A. Yes, sir, that is true.

Q. Is that as far as it goes?

A. Yes, sir.

Q. You know that from being called they are accused of the murder of Rosen?

A. Yes, sir.

Q. Did you read anything in the newspaper about the alleged facts of the case which caused the impression to form that these defendants were therefore guilty of the murder of Rosen?

A. Repeat that, please.

Q. You say you read that they were accused.

A. Yes, sir.

Q. Of the murder of Rosen.

A. Yes, sir.

Q. Of course, you knew that the moment you got in court?

A. Yes, sir.

Q. The fact they are on trial, does that form any impression in your mind that they are guilty?

A. Oh, no.

Q. Does the fact you read in the paper they are accused of the murder of Rosen form any impression that they are guilty?

A. Not necessarily.

Q. Yes, or no.

A. No, sir.

Q. What is this impression?

A. Just from reading in the paper the various defendants, their names.

Q. You have heard their names in court.

A. Yes, but I was talking about newspaper articles I have read at various times.

Q. Have you read of any alleged evidence in the case? [fol. 2534] A. No, sir, I have not.

Q. Which justifies you in forming an impression as to whether they are guilty or not?

Mr. Climenko: I object to the form of the Court's question.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. No, sir, I have not seen any evidence in the case at all.

Q. Am I correct in concluding that you have simply formed an impression they are accused of the murder of Rosen, and that they are presently on trial?

A. Yes, sir.

Mr. Climenko: Objected to as argumentative.

The Court: Objection overruled.

Mr. Climenko: Exception.

Q. Does it go any further than that?

A. No, sir.

Q. You cannot lay that aside because that is the fact, they are on trial under that accusation?

A. Yes, sir.

Q. If you have any unfavorable impression which goes to the question of guilt or innocence, which according to your own statement you have never had anything to indicate, will you put it aside and judge it fairly and squarely from the evidence in this case?

A. I will.

Mr. Climenko: I object.

The Court: Objection overruled.

Mr. Climenko: Exception.

[fol. 2535] By Mr. Turkus:

Q. Mr. Rosenthal has pointed out that the defendants are here to meet one charge only.

Mr. Barshay: I object to that as argumentative.

Mr. Turkus: They are here to meet only one charge, the charge in this indictment.

Q. Do you understand that?

A. Yes, sir.

Mr. Barshay: I object to it.

Q. Whether Mr. Barshay has himself pointed out that one of the defendants has been convicted of other crimes.

Mr. Barshay: I object. It has never been pointed out to this man at all.

Mr. Turkus: To the other talesmen.

It has nothing to do with my question. May I complete my question?

The Court: There will be no ruling until the question is finished.

Q. I will reframe the question. When questioning other prospective talesmen, some of whom have already been examined—I believe every one who has been examined—Mr. Barshay has indicated that Buchalter has been convicted of other crimes in the past for which he is presently serving a long jail term. I have asked other jurors whether they would relax or deviate from their duty as jurors, knowing that he is presently incarcerated. Do you remember those questions?

[fol. 2536] Mr. Barshay: I object.

The Court: Objection overruled. The man was in court throughout, and repeatedly that question was asked.

Mr. Barshay: It has nothing to do with this challenge. That is the point I make.

The Court: Objection overruled.

Mr. Barshay: Exception.

By Mr. Turkus:

Q. So may we go along with the understanding that all of the matters you have read have nothing to do with the charge in this case at all?

A. That is true.

Q. The Judge will instruct you on the law that that is your duty, to find out from the evidence in this case whether the guilt of the defendants on this charge, the murder of a man named Joseph Rosen, has been established to your satisfaction beyond a reasonable doubt. Can you follow that instruction of law?

A. Yes, sir.

Q. Can you apply that instruction of law to this case?

A. Yes, sir.

Q. And should the Judge further instruct you the burden of proof is always on the District Attorney and the defendants have no burden of proof at all, will you follow that instruction?

A. Yes, sir.

Q. Should the Judge tell you further that the defendants need not offer evidence or take the stand, and that if they [fol. 2537] fail to take the stand no unfavorable inference can be drawn against them, would you follow that instruction?

A. Yes, sir.

Q. In short, will you decide the question of guilt or innocence on this charge upon the evidence you hear in this court, applying the law the Judge gives you?

A. Yes, sir.

Mr. Rosenthal: May I ask a question, just in the nature of rebuttal?

The Court: No, you had your chance.

Mr. Rosenthal: Does the court rule I may not request?

The Court: I have ruled.

Mr. Rosenthal: May I respectfully except.

Mr. Talley: I except to your Honor's ruling not to ask this talesman any further questions. May I as—

The Court: You may not resume your trial of the challenge unless there is something new brought out which is in the nature of rebuttal—something entirely new which you did not or could not bring out in your own questioning on the trial of this challenge.

Mr. Barshay: With respect to my client, there is something new, I think.

The Court: What is it? I will rule on it.

Mr. Barshay: May I proceed?

The Court: Yes.

[fol. 2538] By Mr. Barshay:

Q. Now, there has never been addressed any particular question with regard to prior conviction or incarceration of Mr. Buchalter while you were in the box?

Mr. Turkus: I object.

The Court: Objection sustained. The Court takes notice of the fact that he has been in court throughout repeated

questioning by you of the other talesmen on that point, and must have heard it.

Mr. Barshay: Exception.

By Mr. Barshay:

Q. I tell you now as the Judge has already and Mr. Turkus has already said, and I am referring to Buchalter, there may come a time when Mr. Buchalter shall take the stand and you have a right to use the fact of his prior conviction and incarceration in deciding whether or not you should accept or reject that testimony. Now, because of your state of mind that you came here with, and you said you had at present, when you were examined by Mr. Turkus, would the fact he has been convicted on two occasions and is now incarcerated for a long time cause you to accept from the District Attorney less proof with respect to him, or would you require from him more proof if he did not have those convictions?

Mr. Turkus: I object to the question.

The Court: Objection sustained.

[fol. 2539] Mr. Barshay: Exception.

Mr. Talley: I wish to inquire of this talesman with regard to matters that he answered in reply to your Honor's questioning.

The Court: If it is in the nature of rebuttal as distinguished from resumption, the question may be put.

Mr. Talley: I don't understand the term "rebuttal" in connection with an examination of talesmen. Rebuttal has to do with the presentation of evidence which rebuts evidence previously given, but here this talesman tells me one thing in the box and then when he takes the stand tells you something entirely different. I am confused as to his state of mind. I want to straighten it out, which is the purpose of my examination.

The Court: A ruling has been made.

Mr. Talley: I respectfully take exception to your Honor's refusal to permit me to further examine this talesman on the substance of challenge.

By Mr. Rosenthal:

Q. I have this question to address to you—do not answer until the Court rules. When I addressed you and asked you

certain questions and you made certain answers, did you understand the questions which I addressed to you and did you answer them to the best of your ability?

Mr. Turkus: I object.

[fol. 2540] The Court: Objection sustained.

Mr. Rosenthal: Exception.

The Court: Challenge overruled.

Mr. Talley: Exception to all defendants.

(Mr. Dunphy resumes his seat in the box.)

(Mr. Jacobus, a talesman, was then interrogated by Mr. Barshay.)

By Mr. Barshay:

Q. Mr. Jacobus, I speak on behalf of the defendant Buchalter. Do you know him at all?

A. No, sir.

Q. He has been referred to here by the prosecutor and others by the name of Lepke. Do you know him under that name?

A. No, sir.

Q. Did you read about him?

Mr. Tarkus: I object. This was the subject-matter of a challenge.

The Court: Sustained.

Mr. Barshay: I have not questioned this man at all. I except.

The Court: You all tried it.

Mr. Barshay: I am not going on the point of challenge now, that is past. I adhere to your Honor's ruling on that point.

The Court: You may have your exception.

By Mr. Barshay:

[fol. 2541] Q. May I know whether you were ever the victim of any crime?

A. Only a traffic violation.

Q. I said the victim of any crime.

A. No, sir.

Q. Do you know anybody in the Police Department?

A. No, sir.

Q. Do you know anyone at all in Judge O'Dwyer's office?

A. No, sir.

Q. May I know who is associated with you in your firm?

A. No one.

Q. May I know what floor you are on?

A. The 23rd.

Q. Does anyone share the office with you?

A. Yes, sir.

Q. Any lawyers share offices with you?

A. Frederick W. Rowe; I am in the same office.

Q. Anybody else?

A. No, sir.

By the Court:

Q. Frederick W. Rowe was a former Congressman?

A. Yes, sir, Republican.

Q. And certainly he is not campaigning for Judge O'Dwyer's election; is that right?

A. That is right.

Q. He is connected with some bank, isn't he?

A. He is a trustee.

By Mr. Barshay:

Q. Anybody else in the office with you other than Mr. Rowe?

A. No, sir.

Q. Is Mr. Rowe active in campaigning against Judge O'Dwyer?

[fol. 2542] A. No, sir.

Q. Is he still active in politics, to your knowledge?

Mr. Turkus: I object.

The Court: He may answer.

A. I don't know.

Q. Have you discussed Judge O'Dwyer with Congressman Rowe?

A. No, sir.

Q. Have you discussed your prospective jury service with him?

A. Not discussed; I told him I was called for jury service.

Q. Was there any opinion expressed with respect to this case?

A. No, sir.

Q. Have you served on a jury, actually?

A. Yes, sir.

Q. Was it in a capital case?

A. No, sir.

Q. Were you ever a member of the Grand Jury?

A. No, sir.

Q. Do you belong to any societies for the prevention of crime?

A. No, sir.

Q. Any society for the enforcement of law?

A. No, sir.

Q. Were you ever a juror in any case, civil or criminal, where Mr. Turkus or Mr. Klein were lawyers?

A. No, sir.

Q. Are you prejudiced by virtue of the fact that some person has been killed?

A. No, sir.

Q. Did you know Rosen?

A. No, sir.

Q. At the time this was alleged to have occurred, did you read about it then?

A. I don't remember reading it, but I may have.

[fol. 2543] Q. While you were sitting here, none of the things which you may have read recur to you, do they?

Mr. Turkus: I object. This has been gone over on the challenge.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. You know that under our law each defendant is accorded the presumption of innocence?

A. Yes, sir.

Q. You believe in that?

A. Yes, sir.

Q. Do you believe that is a substantial presumption, a substantial right for every defendant?

A. Yes, sir.

Q. Do you feel you must use it as evidence in favor of a defendant?

A. Yes, sir.

Q. The presumption of innocence is so strong, the Court will tell you you may use it as evidence in favor of the defendants. Will you do that?

A. Yes, sir.

The Court: I have ruled "should have probative force," but there is quite a question about that, yet the usual words, "probative force," even they may be debatable.

Mr. Barshay: I take my quotation from Chief Justice White of the United States Supreme Court. I take it precisely from him; that is the only reason I use it.

The Court: Many years ago I had a discussion with [fol. 2544] the late Justice Stapleton on that very point, as to precisely what Judge White meant. We will not go any further on that. It is purely a legal argument with prospective talesmen. The question is whether he will follow the instructions of the Court, whether he believes in it or not.

The Witness: Yes, sir.

By the Court:

Q. Will you follow the instructions of the Court on the law without question, whether you agree with that law or not?

A. Yes, sir.

Mr. Barshay: I take it you will prohibit me from the use of that sentence, "presumption of innocence"?

Mr. Turkus: That has been answered.

Mr. Barshay: May I address the Court?

The Court: You have your answer; you have the Court's ruling, and you have the elucidation by the Court which the Court now regrets having made, because it simply leads to further loss of time.

Mr. Barshay: Exception.

By Mr. Barshay:

Q. Do you agree with the principle which says that when a man pleads "not guilty" to a charge set forth in the indictment he creates for the District Attorney a burden which he must sustain beyond a reasonable doubt, and that burden is to prove the defendant guilty beyond a reasonable [fol. 2545] doubt?

Mr. Turkus: I object.

The Court: Objection sustained. It is not necessary that every talesman or every judge or every lawyer should agree with the law in all its respects. The talesman said he would follow the instructions of the Court as to the law.

Mr. Barshay: Exception.

By Mr. Barshay:

Q. You understand that every person in the jury box has a right to his own opinion?

A. Yes, sir.

Q. That opinion may go, even if it is a prejudicial one, he has a right to it?

A. Yes, sir.

Q. You understand we are searching for prospective jurors whose minds are free?

A. Yes, sir.

Q. Now, my client, I tell you now, is incarcerated for a period of from forty-four to seventy-seven years. Some people have a right to be prejudiced against such a person. Is that one of the items which causes you to form an unfavorable impression of him?

Mr. Turkus: I object to again going over the challenge.

The Court: Sustained.

Mr. Barshay: Exception.

Q. By virtue of that fact, if he should take the stand, [fol. 2546] would you be influenced in disbelieving him because of that fact?

Mr. Turkus: I object. That is a legal question.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Would you less readily accept his testimony even though on the entire evidence he may be telling the truth, because of that fact?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Would you reduce the quality of evidence necessary to prove him guilty beyond a reasonable doubt by virtue of that fact?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Would you expect him to come forth with proof to prove his innocence by virtue of that fact?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Would you increase in any way the burden on the part of the defendant in any degree because of that fact?

Mr. Turkus: Objected to.

[fol. 2547] The Court: Sustained.

Mr. Barshay: Exception.

Q. Would you lessen the burden on the part of the District Attorney because of that fact?

Mr. Turkus: Same objection.

The Court: Sustained.

Mr. Barshay: Exception.

Q. You have heard that the District Attorney intends to present people here who will claim they are accomplices—you have heard that?

A. Yes, sir.

Q. Now, assuming the man comes here and says that he participated in the commission of this crime, and in addition to that he has also admitted on the stand that he has lived a life of crime and committed other murders other than this, burglary, is an ex-convict—would you weigh that person's testimony with caution and care?

Mr. Turkus: I object. He is asking a legal point.

The Court: If the Judge should tell you that the testimony of an accomplice must be viewed with suspicion and accepted with caution and then only if corroborated by sufficient other evidence that tends to connect it with the defendant in the commission of the crime; would you follow those instructions?

The Witness: Yes, sir.

Mr. Barshay: I respectfully except to the Court's [fol. 2548] ruling.

Q. Will you look a bit farther than the accomplice? Supposing in your opinion the testimony which comes

forth from people who claim to give evidence tending to corroborate the accomplice, that testimony by virtue of the fact that it comes from a murderer, an extortionist, criminal, ex-convict, has little weight or no weight whatever, will you then take the instructions of the Court with respect to that?

Mr. Turkus: I object to the form of the question.
The Court: Objection overruled.

A. Yes, sir.

By the Court:

Q. Will you take the instructions of the Court in that and in all other respects?

A. Yes, sir.

By Mr. Barshay:

Q. If the Court should tell you that if one person is an accomplice and he is supported only by another accomplice, that that is not corroboration, will you take that ruling from the Court?

A. Yes, sir.

Q. Now, there may come a time when some person may claim he is not an accomplice, and it will be up to you to decide whether he is or he is not. Will you do that?

A. Yes, sir.

Q. No matter what he claims, if you find from the evidence that he is an accomplice, you will require that his testimony be corroborated, won't you?

A. Yes, sir.

[fol. 2549] Q. In other words, if the Court shall tell you that one accomplice cannot corroborate another, you will follow that?

A. Yes, sir.

Q. Now, a man may come here and say, "I committed this crime." That may be true or it may not. That will be for you to decide. Are you willing to look into that to find out whether or not he is telling the truth with respect to whether or not Buchalter is his accomplice?

A. Yes, sir.

Q. In other words, he may be telling the truth about himself and still be lying with respect to Mr. Buchalter,

and that will be for you to determine and keep in mind at all times. Will you look with suspicion on his testimony?

A. Yes, sir.

Q. Will you take into consideration that together with all the other evidence in the case, the fact that the so-called man who now claims he is an accomplice of Buchalter has never seen or spoken to him in his life?

Mr. Turkus: I object to the form of that question.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Now, Mr. Turkus has addressed you with respect to finding fault with the District Attorney who solved a case from the inside. Do you understand that neither side—or counsel from neither side are witnesses in this case?

A. Yes, sir.

[fol. 2550] Q. We are not witnesses to this crime, you understand that?

A. Yes, sir.

Q. We are merely presenting what we have—is that correct?

A. Yes, sir.

Q. You are not here to find fault with either side, the prosecution or the defense, you know that?

A. Yes, sir.

Q. At the same time, I take it, you will not throw into the scale his evidence, or lend it greater weight because Judge O'Dwyer, according to Mr. Turkus, claims to have broken this case from the inside? That has nothing to do with the weight of the testimony, has it?

A. No, sir.

Q. I take it, because Mr. Turkus claims to have accepted the testimony of the accomplice, that would not influence you in any respect, because he accepted it?

A. No, sir.

Q. The point is, Will you accept it? Isn't that so?

A. Yes, sir.

Q. You are not bound to accept anything I say or anything he says or anything that anybody offers; is that right?

A. Yes, sir.

Q. For it becomes testimony when it is given on the witness stand, subject to direct and cross-examination, and you will give it every conceivable test outlined by the Court?

A. Yes, sir.

Q. Testimony may come here from people which is binding only with respect to one person, two persons, or three [fol. 2551] persons, depending upon the person who gives the testimony. If the Court shall tell you it binds only one defendant, and you may not use it against another, will you adhere to that instruction?

A. Yes, sir.

Q. If it binds two, and does not bind the third, will you adhere to that instruction?

A. Yes, sir.

Q. If the trial should take a long time, you will still keep that instruction in your mind?

A. Yes, sir.

Q. You appreciate that only for convenience are these three men being tried together, when in reality you are giving them separate trials? Do you appreciate that?

A. Yes, sir.

Q. Some of the defendants, through their counsel, have indicated that they may offer a defense in the case—one said an alibi; I don't recall what the other said. Assuming that particular defendant or defendants does offer testimony, I take it you will follow the Court's instructions that because of that you still may draw no unfavorable inference against them—in other words, each counsel can do with respect to his client as he seems wise and correct with respect to his defendant?

A. Yes, sir.

Q. The District Attorney speaks first. He opens up to the jury. He presents his side of the case. Can I have your word that you will keep your mind open and not form a definite conclusion with respect to rejecting or accepting that person's testimony because it comes to you first, but [fol. 2552] that you will wait until the entire case is over before making up your mind?

A. Yes, sir.

Q. In summation the District Attorney speaks last. Counsel speak before him. We are three counsel, who shall sum up in behalf of their respective defendants. Mr. Turkus has said a repetition of the argument three times would not or should not increase the weight of that argument. You recall that?

A. Yes, sir.

Q. He did say that because the argument is repeated three times it does not necessarily mean it has three times the force. You agree with that?

A. Yes, sir.

Q. On the other hand, do you appreciate that when counsel sum up for their respective defendants they have a right to discuss the evidence as they see fit and as they view it, and that it may coincide with another counsel who shall follow?

A. Yes, sir.

Q. And will it lost force with you because it may appear three times in summation?

A. No, sir.

Q. So if you find it helps you in deciding this case and it coincides with your own view of the evidence, you will accept it no matter how many times you hear it?

A. Yes, sir.

Q. You never served as a juror before. Were you ever called?

A. Yes.

Q. Were you ever examined by the District Attorney or by counsel for the defense?

A. No, sir.

By the Court:

Q. What business are you in, Mr. Dunphy?

[fol. 2553] A. Freight forwarding and custom brokers.

Q. What is the firm of custom brokers?

A. The Dumont Shipping Company, 11 Broadway, New York.

Q. How long have you been in that line of business?

A. Eight years.

Q. And before that?

A. I was secretary for B. F. Yoakum.

Q. He is dead?

A. Yes, sir, he died in 1929.

By Mr. Barshay:

Q. Have you at any time discussed crime or investigations of crime—have you heard any lectures on crime?

A. No, sir.

Q. Do you intend to partake in this forthcoming election?

A. No, sir.

Q. Do you know any of the gentlemen here at the prosecutor's table?

A. No, sir.

Q. At any time have you had the misfortune of being the victim of any crime?

A. No, sir.

Q. Do you know the family of Rosen, or did you know Rosen himself?

A. No, sir.

Q. Were you ever a Grand Juror?

A. No, sir.

Q. Did you read about the case when it first happened?

A. I don't recall.

Q. None of the facts here refresh your recollection?

A. No, sir.

Q. Presently, for any reason whatever, is there in your [fol. 2554] mind any prejudice against the defendants?

Mr. Turkus: I object. The challenge has been already tried.

The Court: Sustained.

Mr. Barshay: I am asking him a general question.

The Court: The challenge has been tried.

Mr. Barshay: I am not going into the challenge.

The Court: The objection has been sustained.

Mr. Barshay: Exception.

(Mr. Rosenthal then examined Mr. Dunphy.)

By Mr. Rosenthal:

Q. I believe the questions I am about to ask, in view of the various objections to questions by Mr. Barshay and the sustaining of them by the Court are such that the Court will take some attitude as to this question—

The Court: The Court has ruled consistently on all questions of law.

Mr. Rosenthal: If that be so, we protest over the ruling so far as it concerns my client and also over the overruling of challenge made. I will ask no questions, but reserve my exception.

The Court: All right.

Mr. Barshay: May I say for the record, in behalf of the defendant Buchalter, with respect to the questioning of the juror known as Mr. Dunphy—

[fol. 2555] The Court: No speeches. You have taken your exception. No building up of the record for the benefit of the press.

Mr. Barshay: I except. I spoke to the Court, and not to the press.

The Court: All right, the Court is speaking to you.

Mr. Turkus: Mr. Jacobus and Mr. Dunphy are satisfactory to The People.

Mr. Talley: We reserve our exceptions on the challenges to both Mr. Jacobus and Mr. Dunphy. We wish to make that very plain to your Honor on the record. We do reserve our exceptions in that respect. The defendants peremptorily challenge Mr. Jacobus and Mr. Dunphy.

(Talesmen James L. Edghill, No. 3041; and Mr. Louis F. Stites, No. 3095, were called to the box.)

JAMES L. EDGHILL, was interrogated as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You live at 158 Linden Boulevard?

A. Yes, sir.

Q. Is that between Flatbush and the other street?

A. Yes, sir.

By the Court:

Q. You are right near Bedford?

A. A half a block from Bedford.

Q. There is a political club on the corner?

A. Yes, sir. Democratic club.

[fol. 2556] Q. Do you belong to it?

A. No, sir.

Q. You have heard no talks about this case?

A. None at all.

Q. Have you given it any thought?

A. No, sir.

Q. You are not taking any particular activity in any political campaign?

A. No, sir.

By Mr. Turkus:

Q. Were you present in court when I addressed the other jurors about possible contacts with the clothing and garment industries?

A. Yes, sir.

Q. Is there anything the prosecutor should know about any contacts you have had there?

A. No, sir.

Q. In the Brownsville or East New York areas or the Brooklyn waterfront?

A. No, sir.

Q. Do you have any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Have you heretofore served as a juror in any criminal case?

A. In the Federal Court.

Q. Has that been recent?

A. I guess about five or six years ago.

Q. Were any of the lawyers in that case in court now?

A. No, sir.

Q. Do you know any of the nine lawyers representing these three defendants?

A. I don't know any of them personally; I do remember seeing—think I have—only one or two in the County [fol. 255r] Court.

By the Court:

Q. That does not affect you in any way?

A. No, sir.

By Mr. Turkus:

Q. You are in sympathy with law enforcement?

A. I am.

Q. Did you hear that part of the testimony in this case will come from accomplices?

A. I did.

Q. And you understand that the State's case cannot be proved by one witness; there will be a series of witnesses?

A. Yes, sir.

Q. Do you have any bias or prejudice against accomplice testimony as would cause you to reject it under all circumstances?

A. I have not.

Q. Would you substantially make the same answers as the other jurors did, if accepted, with regard to accomplice testimony?

A. I would.

Q. Will you take every instruction on the law from Judge Taylor in this case?

A. I will.

Q. And conscientiously endeavor to apply it to the facts in this case?

A. Yes, sir.

Q. Do you understand it is not whether you like or dislike an accomplice, it is whether he speaks the truth about the guilty part that each of the defendants played in this crime?

Mr. Tally: I object to the form of the question.

The Court: Objection overruled.

[fol. 2558] Mr. Talley: Exception.

A. Yes, sir.

Q. If you are satisfied by all of the evidence, after hearing everything, if you have a reasonable doubt you will give it to the defendants?

A. Yes, sir.

Q. Will you give to them everything that the law of the land says they should have by way of protection in this case?

A. Yes, sir.

Q. After you give them everything and after you hear all the facts in this case, if your mind and conscience tells you that the District Attorney of this County has established their guilt of murder in the first degree beyond a reasonable doubt, will you say it in your verdict without fear or hesitation?

A. I will.

Q. Is there anything I should know about your ability to render a just and conscientious verdict in the case?

A. I know of none.

LOUIS F. STITES, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You reside just off the Parade Grounds?

A. Right opposite Diamond #1.

Q. Where is your place of business?

A. At my home.

Q. You conduct your business from your house?

A. Yes, sir.

Q. Is that buying and selling jewelry?

[fol. 2559] A. No, sir, I just deal in jewelry wherever I can get something.

By the Court:

Q. You mean you handle memoranda goods?

A. Yes, sir.

Q. You go to the street, get the goods on memorandum, and carry them in your pocket?

A. I have been in the jewelry business for about twenty years.

Q. You have no store?

A. No, sir.

Q. How long have you been doing this?

A. Ever since 1931, when we went out of business. We used to travel.

Q. For what house?

A. Stites.

Q. On John Street?

A. Yes, sir.

Q. Do you buy at pawnbrokers' auctions?

A. No, sir.

Q. You do not pawn jewelry?

A. No, sir.

Q. You are a broker?

A. Yes, sir.

By Mr. Turkus:

Q. Have you heretofore served as a juror, Mr. Stites?

A. Yes, sir.

Q. Have you been examined by any counsel in some of the cases?

A. Yes, sir.

Q. Was it since Judge O'Dwyer was District Attorney?

A. I think Mr. Geoghan was District Attorney.

Q. Do you remember whether any of the lawyers who are now in court were present in that case?

A. No, sir.

Q. At any rate, I was not the prosecutor?

A. No, sir.

Q. None of the defense lawyers were in that case?

A. No, sir.

Q. Did you hear the discussion about accomplice testimony [fol. 2560] many which I have had with the other jurors?

A. Yes, sir.

Q. If accepted, would you substantially give the same answers they did?

A. Yes, sir.

Q. May I go along with the understanding that you have no bias or prejudice against either the District Attorney of the county, Judge O'Dwyer, or against the prosecution of an indictment where part of the testimony comes from accomplices?

A. No, sir.

Q. Do you understand that the tests which the Judge will give you are all common-sense rules to apply to the believability of an accomplice, to find out does he speak the truth, not only about himself, but about them and the part they played in the commission of this crime?

A. Yes, sir.

Q. Regardless of their background, I know you will consider every vicious, criminal act or crime any accomplice may have committed, and that you will adopt the rules of law the Judge gives you in considering the testimony.

A. Yes.

Q. And will you keep in mind it is not whether you like or dislike an accomplice that counts. It is, Does he tell the truth about the part these men played in the murder of the victim named in the indictment?

A. Yes, sir.

Q. Will you further follow the instructions of the Court that there can be no conviction upon the unsupported testimony of an accomplice?

A. Yes, sir.

Q. The Judge may tell you in words or substance—I may [fol. 2561] not use the same words as the Court, but substantially he will instruct you that it is not the burden of the

supporting testimony to corroborate and support every detail that is given by an accomplice, but that it is sufficient, if believed by the jury and it tends to connect the defendants with the commission of the crime. Will you follow that instruction of law with common sense and apply it to the defendants in this case?

A. Yes, sir.

Q. It may be you dislike an accomplice—I don't know what your personal feeling may be against any of these witnesses, with that I can find no fault; but I want to find out if you are satisfied as to their guilt beyond a reasonable doubt, the three of them, I want to make sure that you will not acquit them because you do not like the accomplice.

Mr. Barshay: I object.

The Court: Objection overruled.

Q. How do you feel about that, if you are satisfied they are three guilty men, and their guilt has been established beyond a reasonable doubt, you will not discard that because you do not like the accomplice—do you care to answer?

By the Court:

Q. You may acquit if you do not believe an accomplice.

A. That is right.

Q. But you may not acquit simply because you don't like his looks.

A. Yes, sir.

[fol. 2562] By Mr. Turkus:

Q. When we get through with this case and you have heard the evidence, everything that Judge O'Dwyer produces, if you entertain a reasonable doubt, after you hear it all, you will give the benefit of that doubt to the defendants?

A. Yes, sir.

Q. If you are satisfied of their guilt beyond a reasonable doubt, would you convict them without fear and without hesitation?

A. Yes, sir.

Q. Is there anything that I should know about your ability to render justice in this case?

A. Not as I know.

(During the examination of Mr. Stites a recess was taken until 2:00 P. M., the jury and talesmen instructed not to discuss the case nor let anybody talk to them about it, and to keep their minds open and to read nothing about it. The defendants are remanded.)

[fol. 2563] Afternoon Session—Trial Resumed

(All defendants represented by counsel)

(Examination of James L. Edgehill and Lewis F. Stites continued.)

By Mr. Barshay:

Q. Mr. Edgehill, have you read about this case?

A. I have seen mention of it in the newspapers.

Q. Have you seen it mentioned in any particular paper?

A. In various papers.

Q. Did it include the *Journal*?

A. No.

Q. The *Mirror*?

A. No.

Q. The *News*?

A. I saw the *News* once in a while.

Q. The *Evening Telegram*?

A. I rarely take that.

Q. Did you read about it more than once?

A. I have not read it in any detail. I have seen the headlines. I am familiar with some of the names.

Q. But it did occur more than once, didn't it?

A. I have seen it several times.

Q. Some magazines have published items too. Have you ever looked at them?

A. I have never read anything in any magazines.

Q. Sometimes things about this matter have been mentioned on the radio. Have you ever heard it?

A. I don't think so. I don't recall.

Q. Did you ever hear it discussed?

A. No.

[fol. 2564] Q. You were here the three days waiting for the other jurors to be questioned?

A. Yes.

Q. Have you formed any impression with respect to this case?

A. No.

Q. Have you formed any impression with respect to the defendants?

A. No.

Q. Did you get any idea about them at all at any time or at any place?

Mr. Turkus: That is objected to. It has just been answered that he has formed no impression about any of the defendants or the case.

The Court: That is what he said.

Mr. Barshay: I have now reduced the impression to an idea,—some thought.

Mr. Turkus: I object to it in that form.

The Court: Some what?

Mr. Barshay: Some thought about the defendants.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. As the result of looking at those headlines or any other observation that you may have had here or elsewhere, is there in your mind some bias with respect to them?

A. There is not.

Q. You said you had been a Federal juror.

A. I served in the Federal Court.

Q. More than once?

A. Twice.

[fol. 2565] Q. How long ago?

A. I imagine about six and a half years ago.

Q. Have you ever been a Grand Juror?

A. No.

Q. Have you ever been the victim of any crime?

A. No.

Q. Do you know anyone in Judge O'Dwyer's office?

A. I do not.

Q. I take it you said you knew none of the counsel.

A. Not personally. I have seen some of them.

Q. That would not have any effect on your judgment in this case whatever?

A. Not at all.

Q. The fact that some of us once held office, the fact that Mr. Turkus once practiced law and now it is the reverse, has nothing to do with this case, you understand?

A. I do.

Q. Mr. Turkus said that you should consider every piece of evidence that Judge O'Dwyer will present. I do not know whether or not Judge O'Dwyer will personally present any evidence, but I do not know whether Mr. Turkus meant it in just that way, but I want from you this fact, you will not use the integrity or the reputation or the standing of Judge O'Dwyer in weighing the testimony in this case?

A. I will not.

Q. It has nothing to do with this case at all except that he is the district attorney of the county; you understand?

A. Yes.

Q. You understand personally that neither the Judge nor his Assistant guarantee the truth of any person's testimony [fol. 2566] here as individuals? You understand?

A. Right.

Q. The defendant whom we represent has, by virtue of some prior actions, now been incarcerated for a period of forty-four to seventy-seven years, something like that. In the minds of some people that may arouse a prejudice. I can understand it. Would it arouse a prejudice in your mind against him?

A. No, it would not arouse any prejudice in my mind against the defendant in this case. A certain amount of law enforcement—

Q. Can you tell me just what you mean by the last part of your answer?

Mr. Turkus: I object to that, because that goes into a legal discussion. In certain instances the defendant's incarceration may be considered by the jury.

Mr. Barshay: I did not ask him that.

The Court: I did not hear the last part.

Mr. Turkus: The juror said he would have no prejudice in this case, but that he believes in law enforcement.

Mr. Barshay: He did not say he believes in law enforcement. Let him repeat it and we will find out what he meant.

(Answer read.)

Mr. Barshay: I would like to know what the juror meant by it.

Mr. Turkus: This was a question addressed to the prior conviction of the defendant Buchalter. In certain instances those may be considered by the jury under proper instruction by the Court.

The Court: The answer is ambiguous in that respect. You may explain.

Q. Of course, his Honor shall tell you just how you may use that in judging the testimony, if he should take the stand, and only then. If he does not take the stand you cannot even consider it. You understand that?

A. I understand.

Q. Now may we have from your mouth, please, any explanation or what you intended to say with respect to law enforcement, adding it on to the answer you made.

A. Well, as a citizen I naturally disprove of crime generally.

The Court: Everybody does.

A. But it would not prejudice me in serving and giving a square and honest decision as I could in the jury in any criminal case. I would judge it on the evidence alone and on the instructions.

Q. Now we understand, sir. So that the prejudice which every person has against the commission of crime would not enter your deliberation with regard to the proof in this case; is that so?

A. Definitely.

Q. And if he should take the stand you will follow the instructions of the Court to what extent you may be able to use his present convictions, is that so, only to that extent as the Court shall tell you you may and no further? [fol. 2568] A. I have no opinion at the present time.

Q. If he should take the stand, because of his prior conviction you will accept his testimony subject to the rules as his Honor shall give them to you; is that so?

A. I will.

Q. And that natural prejudice that people have will be dissipated with respect to weighing his testimony; is that so?

Mr. Turkus: Just a minute. That is bad law.

Mr. Barshay: What is bad law? I did not give him any law, your Honor; I asked him to follow the instructions of the Court with respect to the law.

By the Court:

Q. Will you follow the instructions of the Court in the event of the defendant taking the stand as to how you may consider his prior conviction as impeaching his testimony as a witness?

A. I will, sir.

By Mr. Barshay:

Q. And no other, sir, isn't that so?

A. Right.

Q. So that you will judge him on the merits of this case and by no other standards?

A. Exactly.

Q. I take it, encompassed in your belief in the enforcement of the law is the belief in the presumption of innocence?

A. Correct.

Q. Do you believe now that this man here is presumed innocent under the law of this charge as any person in this world?

A. I do.

[fol. 2569] Q. And do you believe further that presumption remains with him until twelve of you unanimously, after a consideration of every bit of evidence in this case, decide that it is overcome or it has not been overcome beyond a reasonable doubt?

A. I do.

Q. Should the defendant fail to take the stand, fail to call a single witness, fail to explain a single accusation against him, and the Court shall tell you you must not draw any unfavorable inference by reason thereof, you won't hold it against him?

A. I will not.

Q. Should anyone say, "Well, the others took the stand, why didn't he?" you will call that law that the Court shall give you to their attention, isn't that so?

A. Yes, correct.

Q. Now, with respect to you, sir, have you had any prior experience in criminal courts?

A. I have had experience with Alexander & Green six years.

Q. How long are you with them?

A. About six years, from 1898 to---

By the Court:

Q. Was Mr. McIntosh head of the firm then?

A. No, Mr. McCall, H. M. Alexander and Mr. McCullough, William C. Denning, and Mr. Pearson.

By ⁴Mr. Barshay:

Q. Did you study law?

A. I studied, but I never graduated.

Q. Did you ever study criminal law?

A. No, sir, more corporation.

[fol. 2570] Q. Did you come in contact in that firm with people who practiced criminal law?

A. Naturally.

Q. Did you discuss it with them?

A. No.

Q. Did you hear them discuss it among themselves or sometimes when briefs were discussed in the office, did you participate?

A. But not criminal work.

Q. Did you ever investigate cases?

A. No, I took care of the stipulations, diaries, used to go to court, and different things like that, regular law clerk.

Q. You were managing attorney, in other words?

A. No, there was four or five of us did the same kind of work.

By the Court:

Q. You had a whole floor then?

A. Yes, sir, except we had a private library.

Q. That was in the Trinity Building then?

A. No, sir, 120 Broadway.

The Court: That burned down.

By Mr. Barshay:

Q. Did you read about this case, sir?

A. Yes, sir, in the *Eagle* and *New York Times*.

Q. More than once?

A. Yes, on several occasions, talked it over home—not this particular case, but some of the defendants in this case.

Q. And by virtue thereof did you come to any conclusion?

A. Yes, sir, naturally.

[fol. 2571] Q. And did that conclusion go to their guilt or innocence?

A. That we thought they were guilty—that was the case before. This is a different case.

Q. You said you came to some conclusion.

A. You know how we discuss things.

Q. Perfectly all right. I quarrel with no man who expresses his opinion. Even if it is against me, that is still his right. And, having come to that conclusion, I take it you carried it into the jury box as you sit here?

A. Yes, sir, but that won't—

Q. We will get to that. In other words, the opinion that you formed, based on newspaper reading, with no explanation, without accepting the truth or falsity of the accusation, you came to a conclusion— And so that conclusion was detrimental and prejudicial to the defendants?

By the Court:

Q. Was that simply a logical deduction based upon an assumption as to the truth of the newspaper report?

Mr. Barshay: I object to the word "logical."

The Court: Sustained. It may have been illogical. I did not mean that. I should have used another word.

Q. Did you assume that the newspaper report was true?

A. Well, yes, sir, you know how you can believe.

Q. Was that an opinion on your part that it was true?

A. Yes, sir, just a general opinion.

[fol. 2572] Q. Or was it simply an opinion based upon an assumption as to accuracy for the purpose of forming the impression?

A. Well, it formed an impression.

Q. I take it you are a man of experience in one of the biggest law firms in the city, and you have had a rich experience since then. You are a man of intelligence, and you know that you cannot swear to the truth of anything just because you read it in the newspapers.

A. I did not say it was the truth. I just read it.

Q. Did you read about this particular case?

A. No, sir, about other cases in there that led up to this case.

Q. Not this case?

A. Not this case.

Q. Have you formed any opinion as to the guilt or innocence of the defendants in this case?

A. No, sir.

By Mr. Barshay:

Q. Was this case mentioned?

A. No, I don't think it was.

Q. You said it led up to this case. Then it must have been mentioned, sir.

By the Court:

Q. Do you know the name of this case, the man who was killed.

A. No, sir.

Q. Or the date on which the alleged killing occurred?

A. No, I do not know that.

Q. Do you know anything other than that these defendants are being tried for having killed somebody at some time?

[fol. 2573] A. I only knew what I read about the other one being sent away to prison for a long term.

Q. That has been discussed freely here. You mean you assumed he was guilty then, because he was convicted?

A. That had something to do with it.

Q. What we want to find out is whether you can judge this case upon the evidence and the evidence alone.

A. Yes, sir. What I read would have nothing to do with this case at all, none whatever.

Q. And, having been in a law office, you surely know that the prior conviction and imprisonment is not competent except for the purpose of impeachment in the event only that the person takes the stand as a witness?

A. Yes, sir.

Q. You know that rule?

A. Yes, sir.

Q. You will abide by that?

A. Yes, sir.

Q. You will give the defendants a square deal?

A. Absolutely.

Mr. Mr. Barshay:

Q. What I am driving at is, perhaps subconsciously you may let the conclusion which you formed, even though it

may be unfounded, you may let that conclusion creep into the judgment in this case in deciding the guilt or innocence.

A. I don't think it would.

Q. When you say, "I don't think it would," is there a doubt?

A. It would not creep in. This case I will listen to the [fol. 2574] man who is giving the evidence.

Q. Would you expect the District Attorney to come forth with less proof because of some opinion you may have about something else?

A. No, sir.

Q. Would you expect the defendant to make some explanation here with respect to the charge here, or some forth with some evidence?

A. No.

Q. Would you judge him more harshly by virtue of some conclusion you have?

A. No, I would go just by the evidence.

Q. Would you allow any sentiment at all to creep in in deciding this case by virtue of some fact or facts or some conclusion or opinion that you had in some other matter?

A. No.

Q. I take it you are in accord with the principle which says that one man can be tried for one charge at one time.

A. Yes.

Q. No matter what else you may think, if he is not proven guilty beyond a reasonable doubt by evidence which you believe here you must acquit him?

A. Yes, sir.

Q. You will acquit him?

A. Yes, sir.

Q. If that is the fact?

A. Yes, sir.

Q. I take it you, too, sir, won't allow the integrity and the reputation of the District Attorney of this county to enter into this case by way of influencing your judgment?

A. No.

Q. And you won't let the fact that Mr. Buchalter is now serving a prison term influence you in this case otherwise [fol. 2575] than instructed by the Court?

A. Not in this case unless the Court instructed me.

Q. And if he does not take the stand, you may not even consider it in this case at all in any respect; you understand that?

A. Yes, sir.

Q. Even you have heard about accomplice testimony. Now I am addressing these questions collectively both to Juror No. 11 and to you, without repetition. If the Court shall tell you that no accomplice can have his testimony accepted unless and until you weigh it with suspicion, with care, and with caution, and only then?

A. Yes, sir.

Q. And you must also look further than that. If he has a criminal background, which he admits, or he does not admit, but which the evidence tells you he has, you will look into that too?

A. Yes.

Q. And with every demerit mark, sir, that you find that this witness has, so much more caution will you use with respect to accepting or rejecting his testimony?

A. Yes, sir.

Q. And if other accomplices come here and are no better than the first, you will use the same rule with respect to them, won't you?

A. Yes. Yes.

Q. And one accomplice cannot corroborate another. Do you agree with that?

A. Yes.

Q. And if some man says he is not an accomplice and the evidence in your mind shows that he is, you will so decide. [fol. 2576] won't you?

A. Yes, sir.

Q. And if you find that any person has a motive for giving testimony and declaring himself in the manner in which he does, and you find there is such motive, and that motive induces the falsity of his testimony, you will consider it, won't you?

A. Yes.

Q. No matter what that motive may be?

A. Yes.

Q. And if it is a hope of escaping punishment for crimes which he committed or getting some reward, you will consider that, too?

A. Yes.

Q. And if you find out of the evidence that the witness or witnesses have received treatment of a nature to which he is not ordinarily accustomed and that fact induces him to testify, will you consider that?

A. Yes.

Q. And will you?

A. Yes.

Q. In other words, we will shed light as best we can on every witness who takes the stand, accomplice or not, and you shall find your own way in determining the truth or falsity; will you?

A. Yes.

Q. And if other testimony comes here, other witnesses, which tends to connect the defendant with the commission of the crime, the law as given by the Court shall say to you, "Use certain standards in measuring the truth or falsity of their testimony," you will follow it?

A. Yes.

Q. You will obey that law, won't you?

A. Yes.

[fol. 2577] Q. And if this other independent testimony comes from murderers and extortionists and convicts and pimps and shylocks and draft-dodgers, you will consider that, too, won't you? This is not talk. Don't accept it until you hear it as truth from the stand. So out of all that you find a reasonable doubt, the Judge says a reasonable doubt, you must give it to the defendant, and you will?

A. Yes.

Q. And you will too?

A. Yes.

Q. If by any chance— Well, I would not say by any chance. I take it that the Court in its wisdom will keep you gentlemen together throughout this trial. That is a matter of procedure for the Court. You won't charge that to the defendants, will you?

A. No, sir.

Q. You, sir?

A. No.

Q. As far as you know and as far as I know, if you should take your oath as jurors to render an impartial verdict in this case, will you keep your oath?

A. Yes.

Q. And you owe no obligation to anybody in this case except to do your duty as a juror, eminently impartial to both sides?

A. Yes, sir.

By Mr. Cuff:

Q. Mr. Edghill and Mr. Stites, I will address my questions, as Mr. Barshay did, to you both together, so there won't be any repetition if I can avoid it. I gather from what you said, Mr. Stites that you have, up to the time you [fol. 2578] took your seat in the jury box, an unfavorable impression about the defendants or some of them. Is that right?

A. Yes.

Q. You have it now?

A. I have it now.

Q. Would you mind telling me how long that impression has remained in your mind?

A. Since I first started to read about it.

Q. That does not give us any idea.

A. About a year and a half.

Q. You had this unfavorable impression?

A. Yes.

Q. Entertain it now, been in your mind for a year and a half?

A. Not about this case.

Q. I am addressing my questions now to your impression. I am not talking about anything else, just your impression which you say you have kept in your mind for one year and a half at least, is that right?

A. Yes.

Q. It has not grown any weaker in that time, has it?

A. Yes, I did not think about it.

Q. Have you changed your mind about it since you first formed it?

A. I have not changed my mind; I did not think about it.

Q. I am not asking you that. I say that impression has not grown any fainter or weaker, has it, in the year and a half?

A. No, sir.

Q. And each time you took up a newspaper and found some article about these defendants in it you read it in the

[fol. 2579] light of that impression which you had previously formed?

A. Yes, sir.

Q. And each succeeding newspaper or whatever it was, magazine, that you read, deepened the impression as it was formed originally, didn't it?

A. Yes, sir.

Q. So that it continued to grow stronger rather than weaker as the year and a half went by, isn't that the fact, honestly speaking?

A. Yes, sir.

Q. In the paper that you read the articles contained statements that were in your mind construed by you as detrimental to the defendants or some of them in this case, isn't that right?

A. I don't get the first part of it.

Q. The articles which you read and which helped to form in your mind this unfavorable impression that you have told us about, did they contain statements or expressions of opinion that were detrimental to these defendants?

A. Yes, sir.

Q. And you accepted those statements and those expressions of opinion that you read in those papers as true, did you not?

A. I did not know anything about it.

Q. You did accept them as true? Did you tell Mr. Barshay that as you sit in the jury box now you regard these defendants and all of them as innocent men, presumed to be innocent in this case?

A. In this case until the trial, until I get the evidence.

Q. Do you honestly believe, Mr. Stites, and I am only seeking your Honest opinion, so as to ascertain the state [fol. 2580] of your mind—do you honestly believe that after entertaining this unfavorable impression about the defendants or some of them for a year and a half that you can do what the law says you must do, give the benefit of the presumption of innocence to these defendants and each of them, one hundred per cent?

A. No, I would not.

Q. You don't think you can?

A. Not the way it is now, no, sir.

Mr. Cuff: Challenge for cause.

The Court: Try the challenge.

LEWIS F. STITES, residing at 10 Westminster Road, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Cuff:

Q. Mr. Stites, before you were sworn I asked you a series of questions.

A. Yes, sir.

Q. And you made answers to them?

A. Yes, sir.

Q. If those questions were put to you now in the same fashion would your answers be the same?

A. They would.

Q. And do those answers reflect the true state of your mind as you express it?

A. Yes, sir.

Mr. Cuff: That is all. I press the challenge.

The Court: The trouble is that due to some of the answers being inaudible, the Court does not know what they were.

Mr. Turkus: On the basis of the record made by Mr. Cuff and Mr. Barshay, the District Attorney will not oppose [fol. 2581] the granting of the challenge.

The Court: He may not oppose it, but I cannot allow challenge by consent.

Mr. Rosenthal: He said the present state of his mind is such that even though the law is that a defendant is presumed to be innocent, that that is not the frame of mind in this case at this time. That is in substance——

Mr. Cuff: That is what he said substantially. May we have the answer read?

The Court: Is that correct?

The Talesman: What was that?

The Court: Please listen. Mr. Rosenthal will say it again.

Mr. Rosenthal: Let me ask it in the form of a question.

By Mr. Rosenthal:

Q. Mr. Cuff just asked you a series of questions. This is Mr. Cuff, who just addressed you.

A. Yes, sir.

Q. In response to his question, isn't it a fact that you said in substance that in this trial here you could not give the defendants the benefit of the presumption of innocence which arises in their favor? Is that what you answered?

A. I did not understand that. This trial has not taken place yet.

Mr. Cuff: May we have the question and the answer read?

(Question and answer read.)

The Court: Sustained.

[fol. 2582] By Mr. Cuff:

Q. Now, Mr. Edghill, I gather from what you told Mr. Barshay and Mr. Turkus that you will strive in every way to apply the rules of law that his Honor will give you for your guidance in the jury room in considering the evidence and in arriving at a just determination in this case; is that right?

A. Correct.

Q. Now, if his Honor charges you that you and the eleven other men who will be selected as jurors in this case are the sole and absolute and exclusive judges of the fact, that no one, not even his Honor, can invade that province of yours, will you see to it that you are guided by that instruction and that you will, uninfluenced by anybody but your own consideration of the evidence and your discussion with your fellow jurors, decide the facts in this case?

A. I will.

Q. If you reach the conclusion honestly and fairly, after giving that careful consideration to the evidence, under the rules that his Honor will give you for your guidance, if, I say, you should reach the conclusion that there is a reasonable doubt as to the guilt of the defendants or any one of them, and that that is a doubt that is based upon the evidence or lack of evidence, will you have any hesitation in giving that doubt, the benefit of that doubt, to the defendant or defendants to whom it applies and vote not guilty?

A. No.

Q. Assume that you have reached that reasonable doubt based upon your consideration of the evidence and reasonable [fol. 2583] able discussion with your fellow jurors based upon the evidence in the case fails to convince you that you are wrong, will you for any reason surrender your judgment, other than for any reason other than reasonable argument and consideration of the evidence, if his Honor tells you that you must give to the defendants the benefit of your individual judgment in your verdict?

A. I will not.

Q. Neither the lateness of the hour nor the number of men who may be against you on that question will influence you so long as you are honest in your entertainment of that reasonable doubt, is that right?

A. Correct.

Q. And if you are selected here may I rest assured, so far as my client is concerned, that no consideration other than the credible evidence in this case, the evidence that you believe after giving it the consideration that it is entitled to, will influence your vote; is that right?

A. Positive.

Mr. Cuff: That is all.

By Mr. Rosenthal:

Q. Mr. Edghill, when Mr. Barshay was questioning you he asked you whether you knew any of the lawyers and you said no, except from seeing them around the court-house, or some answer such as that. You meant around this court-house?

A. Yes, in the County Court.

Q. Have you been called as a juror before in the County Court?

A. Six or eight times in the past seven or eight years. [fol. 2584] Q. And when was the last time that you were called?

A. I think the last time was toward the end of last year or early this year in Judge Fitzgerald's part.

Q. Toward the end of last year or the early part of this year? Judge Fitzgerald's court?

A. Yes.

Q. Were you actually examined at that time?

A. No, I have only got as far as the jury box once.

Q. You went as far as the jury box and you were excused by one of the counsel?

A. I was excused by mutual consent.

Q. Was Mr. Turkus the attorney in that case?

A. I don't think so.

Q. Can you recall who the defense counsel was? Was it any one of the lawyers in the court-room?

A. I was not in the case, so I do not know whether—

Q. What I thought you said was that you had gotten into the jury box.

A. Yes.

Q. Was it a capital case, a murder case?

A. Yes, a re-trial.

Q. Were you called on a special panel?

A. Excuse me—the case I was excused on—

Q. You are not allowed—

Mr. Turkus: I waive.

Q. Will you give me the name?

A. The case was six men charged with murder.

Q. That was more than a year ago; That was before [fol. 2585] Judge O'Dwyer became District Attorney.

A. That is right.

Q. That was the last time you were called?

A. No, I have been called several times since.

Q. Then you misunderstood me. I asked when was the last time you were called.

A. The last time on this panel was either early this year or December last year.

Q. The question I asked you was in reference to the last time you were called, which was December of last year or January of this year. Did you actually get called to the jury box at that time?

A. No.

Q. You were merely on the panel?

A. On the panel; my name was not drawn.

Q. Was Mr. Turkus the Assistant at that time?

Mr. Turkus: I did not try any case in December or January.

Q. Was that before Judge Fitzgerald, that is, this last time?

A. Yes.

Q. And was that a capital case also?

A. Yes.

Q. Were you present in the court-room during the discussion between the Assistant District Attorney and the prospective jurymen and defense counsel at that time?

A. I was in the court-room two days.

Q. Do you recall who the Assistant was then?

A. I don't.

Q. You don't recall who the defense counsel was?

A. I can tell you what the case was. I don't recall who—

[fol. 2586] Q. In examining the jurors we are supposed to refrain from any discussion of the facts of other cases. For that reason, in a round-about way, we lawyers try to find out in our own mind whether we can figure the case. I don't want to ask you questions we are not supposed to discuss. Something might happen which might prejudice the other men and make us start all over again.

A. I don't recall who the counsel were.

Q. And how long before that time were you called to serve, approximately?

A. About three months. That case was postponed. I got five notices postponed. Finally it was called off.

Q. So when you said you were called four or five times in the last three years, you mean, I assume—and if I am wrong, correct me—that you were originally called and the case was continuously postponed?

A. No, I only considered that as one.

Q. When then before that one was it that you were called to serve?

A. The year before last, 1939.

Q. That was before Judge O'Dwyer was District Attorney. That was while Judge O'Dwyer was on the bench, was it? 1939, must have been.

A. Yes.

Q. Did you sit in any of these cases in the County Court at all, actually participating in the trial as a juror?

A. No.

Q. So your only actual service as a jurymen has been in the Federal Court?

A. And the Supreme Court.

Q. Those were civil cases?

A. Then I was on the Amen.

Q. That was in the Supreme Court?

A. I did not serve on the jury.

[fol. 2587] Q. You were called, but did not get into the box?

A. I got into the box but was challenged.

Q. In any of the cases that you served on in the Federal Court, was the question of accomplice testimony ever a part of the case?

A. No.

Q. So that in so far as the question of accomplices are concerned, the discussion as to accomplice testimony in so far as you are concerned, I should say, is confined to what

you heard in this court in the last couple of days that you have been here; am I right in that assumption?

A. Right. No, I heard that in other cases—instructions of the jury.

Q. In other words, while you were seated there you heard instructions to jurymen who were other than yourself?

A. Yes.

Q. Who were actually serving, and you listened?

A. Right.

Q. Of a similar nature to what you heard here today; is that correct?

A. Right.

Q. You have read concerning one or more of these defendants, you say, in various newspapers. And in the reading matter which you have seen did you read it to such an extent that it in any wise formed any impression in your mind?

A. No, I only glanced it over.

Q. You have never served as a Grand Juror?

A. No, sir.

Q. And in glancing over the matter which you read, was it just a cursory reading, or did it form any impression of any character on your mind?

[fol. 2588] Mr. Turkus: Objected to. That has been answered. The talesman said it was a cursory reading.

Mr. Rosenthal: This is the first time the word has been used.

Mr. Turkus: Didn't you use the word?

The Court: Overruled.

By the Court:

Q. Did it form any impression as to the guilt or innocence of the defendants?

A. None at all, no, sir.

By Mr. Rosenthal:

Q. You feel here at this time that so far as all the defendants are concerned, that you could be fair and impartial to both sides, taking the law from the Court and applying that law to the facts as you see them; is that correct?

A. I do.

Q. You understand that each one of these defendants, although they are being tried together, are entitled to a separate trial at your hand; you understand that?

A. I do.

Q. I appear, together with my associates, for the defendant Capone. That is clear to you?

A. Yes.

Q. Each defendant has his own counsel or counsels. The mere fact there happens to be nine counsel in the courtroom here does not in any wise act to the detriment of the defendants in your mind, does it?

A. In no way.

Q. In the case of the defendant Capone, who I represent, in the judgment of his counsel we may put in a defense, in [fol. 2589] other words, the defendant may take the stand. Now, merely because he is a defendant, would that in and of itself make you disbelieve him if he took the stand?

A. No.

Q. Of course, you understand that, the same as with any other witness, you have a right, when you are determining what weight you are going to give to the testimony of a witness, to determine what interest or motive he may have to testify. You understand that?

A. Yes.

Q. As well as his actions and demeanor on the stand and his background, everything, anything that will aid you in your mind to solve the main issue, namely, Is the person telling the truth? Now, if the defendant offer himself as a witness and you, a juror, having that in mind, and you believe he was telling the truth, you would give the same value to his testimony, would you not, as you would give to any other person you believed; am I correct?

A. Correct.

Q. The word "alibi" has been used. I do not know whether it has been discussed while you have been a prospective jurymen or not. Have you heard it discussed?

A. (Answer inaudible.)

Q. It may be possible that the defendant may offer proof of what is termed in law an alibi, which simply means, in plain language, that there will be individuals who will take the stand and testify to the fact that the defendant was not at or near the scene of the particular crime at the time it is alleged that it happened. Do I make myself clear?

[fol. 2590] A. Perfectly.

Q. If the Court were to instruct you—and the only reason I am talking anything about the law to you is this, that you understand, as a human being, that you have a right to your own opinion in your own mind. Some of us object to certain law, and we subordinate the law to our own opinion. Is that right? Some people on prohibition. Is that right?

A. Yes.

Q. The purpose that I have in mind in questioning you is that you may disagree on particular points, and on those points, if they arise in this trial, you might in your own mind feel you would be prejudiced. Do I make myself clear to you?

A. Yes.

Q. For that reason, any question that I may address in which I say anything about the law is merely to ascertain whether or not you feel competent, if you are accepted as a juror, to follow those instructions of law and subordinate your own opinion, whatever it may be, to the law itself. Is that clear?

A. Yes.

Q. If proof of an alibi is offered and the Court were to say to you that the law of our land is that no man has to prove his innocence and that no man has to offer anything in his behalf, he does not have to take the stand, he does not have to call any witness, and whether he does or he does not, the burden never shifts from the District Attorney to establish his guilt to your satisfaction beyond a reasonable doubt, before you can convict; assuming that the Judge tells you [fol. 2591] that, does the mere fact that I have mentioned to you that the defendant may take the stand and offer proof, in any wise lead your mind to believe that under circumstances of that character the burden would shift over to our side?

A. It does not.

Q. If the Court were to instruct you that where evidence of an alibi is offered, if that evidence is of sufficient import to your mind to raise a reasonable doubt as to whether the particular defendant who offers the evidence did actually participate in the crime, that doubt, like any other doubt, must be resolved in favor of the defendant and you must acquit, would you follow that law?

A. I understand.

Q. On the question of accomplices, I believe Mr. Turkus asked a question—and I don't recall whether the Court

addressed any remarks particularly to you along the same line—as to the fact that no man can be convicted on the uncorroborated testimony of an accomplice. Is that clear?

A. Yes.

Q. If the Court were to charge you that the corroboration, the other evidence, is not evidence of a number of accomplices accusing these defendants, but must come from an independent source, you would follow that instruction?

A. I will follow the instructions of the Court.

Q. You understand that the accomplice may be telling the truth about himself and at the same time telling an untruth as to the others. Is that true?

A. Yes.

Q. And do you understand further that your job is not to [Vol. 2592] find out whether he is telling the truth about whether he, the accomplice, so-called, committed the crime, but your job is to find out whether he is telling the truth about any one of these defendants when and if he accuses that particular defendant of having helped, aided, or participated in the crime itself. Is that clear to you?

A. Yes.

Q. You understand further that if the Court were to charge you that the independent evidence outside of the accomplice testimony is not proof that actually a crime was committed—to make myself clear, that if the accomplice says, "I shot the man, and he dropped in front of such a place, and he died in an automobile," a policeman takes the stand, a coroner or medical examiner, and says, "We found the man dead with a gunshot, in an automobile," that does not prove that any one of these defendants helped him; is that true?

A. Yes.

Q. Do you understand that the proof which you must look for if you are accepted as a jurymen is independent proof which will tend to connect the particular defendant with the crime? Is that clear?

A. Yes.

Q. You find no fault with any law of that character?

A. None whatever.

Q. And if you are instructed by the Court on the proposition, if it does arise, of that character, you will strictly adhere to it and follow it; is that correct?

A. I understand.

Q. It may be, sir, that the District Attorney may contend—[fol. 2593]—and before you were accepted on the jury this has been repeated a number of times—we have no way of ascertaining at this time what the District Attorney contends, therefore we address certain questions to you that may or may not subsequently come into the evidence; is that clear to you?

A. Yes.

Q. It may be that the District Attorney may contend that this independent evidence consists of an alleged oral statement or admission which the one or more of these defendants are supposed to have made to somebody whom he will call as a witness, the District Attorney, and who will go on the stand and say, "I spoke to the defendant. He, the defendant, said to me that he helped commit the crime." Do I make myself clear so far?

A. Yes.

Q. If such happens to be the case will you, in determining what weight you will give to that testimony, determine the source from which it comes?

A. Yes.

Q. And if you find the source from which it comes is one where the particular individual has a motive, whether it be the desire for revenge, whether it be the desire to escape punishment for murders that he, the witness, may have committed, or whether it be any other desire, whatever the motive may be to testify falsely, will you, in considering his testimony, judge from all the surrounding facts and circumstances whether or not he is telling the truth when he makes the statements accusing the defendant?

A. I will.

[fol. 2594] Q. It may be, sir, that you in your wisdom, after listening to all the evidence, may come to a conclusion one way or the other which is adverse to a majority of the members of the jury. If that time does come you understand that your duty would be to reason and tell the other remaining jurymen the reason for your coming to the conclusion that you do; is that right?

A. I understand.

Q. And you understand further their duty is correspondent to your duty, ultimately they are to reason with you and tell you their reason; is that clear?

A. Yes.

Q. If after that, after reasoning with the other men, the opinion which you formed on your conscience is one which remains with you, would you, merely because of lateness of hour, the length of time of the trial, the fact that numbers are against you, or for any other reason except the fact that you have been convinced that you are wrong in your logic, would you change your opinion merely because of those facts?

A. No.

Q. You have been asked, or most of the jurymen have been asked whether you would fearlessly or courageously find a verdict of guilty if the evidence warranted it, and you rightly said yes. On the other hand, because of publicity having been given to this case, do you feel that it is your bounden duty to find a verdict of guilty if the evidence does not warrant it?

A. No.

Q. You know that you owe just as great a duty to these [fol. 2595] defendants, who are a part of the State of New York, as you owe to the People of the State of which they are a part and you are a part; you understand that?

A. I do.

Q. And you understand that your bounden duty, if you are convinced of the fact that The People have failed beyond a reasonable doubt to prove the guilt of these defendants, is to fearlessly and courageously announce that fact in your verdict, just the same as you should fearlessly and courageously and without hesitation announce an adverse verdict; you understand that?

A. I do.

Q. You have that courage, have you?

A. I hope so; I believe so.

Q. Do you happen to know Captain Bals of the Police Department, Lieutenant Ostrato or Detective McDonough, Detective Swift, Detective McCarthy—do you happen to know any of those?

A. No.

Q. Have you any close friends who are in the Police Department?

A. No, I have not. I only know two to come in contact with.

Q. Two patrolmen?

A. In Headquarters.

Q. Two men from Police Headquarters?

A. Yes.

Q. What Police Headquarters?

A. Manhattan.

Q. Would you mind telling me the names of the two men?

A. Captain Frank Upton of Missing Persons Bureau.

Q. And who is the other man?

A. I think he is Lieutenant Kane.

[fol. 2596] Q. I don't want to pry into your business. And if you have any objection to disclosing this, don't think I am unnecessarily curious. You say you came in contact with these men in a business way. May I ask what you mean by that?

A. I was connected with the—Welfare work.

Q. Was it in connection with that particular work that you came in contact with them?

A. Yes.

Q. You have no social acquaintance?

A. None at all.

Q. They have not visited you or you them?

A. No.

Q. And you have never discussed police duties with them?

A. No.

Q. That was the real purpose of my inquiry.

A. No personal acquaintance.

Q. That you never discussed police. Mr. Turkus has made mention about the fact as to whether you had any objection to the District Attorney breaking a case from the inside by using the testimony of an accomplice. Do you recall that?

A. Yes.

Q. You don't assume from the statement that he makes here that it is a fact that this case has been broken from the inside so far as it affects the defendant? That is your job. You understand that the fact that a particular individual tells him or tells Judge O'Dwyer or the Grand Jury that he, that individual, actually shot and killed Rosen and then accuses these three men of being a party, it is no proof that what he may have told the Grand Jury or Mr. Turkus or Judge O'Dwyer is the truth other than it affects [fol. 2597] him, the particular individual; is that right?

A. Right.

Q. Now then, if you find that that particular individual, the so-called accomplice, has committed a number of murders, and if he admits to this one, this one in itself, and if he testified before the Grand Jury, the Court will tell you he gets immunity, he cannot be prosecuted——

Mr. Turkus: That is bad law.

Mr. Barshay: But it is the law.

Mr. Rosenthal: It may be a bad law, but it is good law.

Mr. Turkus: It is bad law the way you say it.

Mr. Rosenthal: Let me withdraw it.

Q. Let me put it this way generally: This particular individual who calls himself now an accomplice, it may develop, has committed a number of murders for which the individual wishes to escape punishment to himself. It may develop. So that the statement of Mr. Turkus to you about the solution from the inside does not have any weight or effect on you as you go into this jury box?

A. No, naturally I do not know anything about the case.

Q. I am not trying to ask you any tricky questions. I just want to see whether or not, because he tells you something, you start off with the assumption that it is true. You do not start off with the assumption that anything he has told you, not under oath, is the truth, do you, any more than anything I have told you?

[fol. 2598] A. Naturally not.

Q. You understand that your province is to take the truth as you see it only from the witness stand and from no other place?

A. Right.

Q. And do you understand further that whatever your verdict may be, if it is based on your conscience, that it is your verdict and it is your conscience and it is your oath, and nobody can be heard to complain whether it be the defendants or any other person. You understand that?

A. I understand.

Q. Have you any reason that has not been reached by questioning by any of the counsel or the Court that in your mind as you sit here would prevent you from acting as a fair and impartial juror? Do you know of any reason at all?

A. No reason.

Mr. Rosenthal: No challenge for cause.

Mr. Turkus: Mr. Edghill is satisfactory to The People of the State.

Mr. Barshay: The gentleman is satisfateory.

(James L. Edghill took Seat No. 11 in the jury box.)

(Arthur A. Fisher, of 5822 Eighth Avenue, was called and took Seat No. 12 in the jury box.)

Mr. Talley: Will your Honor see me at the bench with the District Attorney for a moment?

The Court: Yes.

(Mr. Talley and Mr. Turkus conferred with the Court at the bench.)

[fol. 2599] By Mr. Turkus:

Q. Mr. Fisher, do you reside at 5822 Eighth Avenue?

A. Yes.

Q. Is that commonly called Bay Ridge?

A. Yes.

Q. Have you lived there for a number of years?

A. Just three years.

Q. You are listed here as a secretary. By whom are you employed?

A. Real estate.

Q. When you qualified as a special juror were you working for somebody else?

A. No, I was working for myself as a real estate man.

By the Court:

Q. Local man?

A. Yes, local.

Q. In that neighborhood of the Long Island Railroad cut?

A. Yes. We have been there since 1917. We do business on Eighth Avenue.

Q. You rent property and manage it?

A. That is right.

Q. How long have you been doing that?

A. Since 1917 in that particular spot, 5718 Eighth Avenue, Brooklyn.

Q. Before you went into business, weren't you in some office downtown?

A. No, I was not.

Q. Do you belong to a civic organization?

A. I do not.

Q. May I ask how old a man you are?

A. Fifty-four.

Q. Born in Brooklyn?

A. I was raised in Brooklyn.

Q. Before you went in the real estate business, what business were you in?

A. I was in the wire business.

[fol. 2600] Q. Whereabouts?

A. In Taaffe Place.

Q. That is off Willoughby Avenue?

A. Two blocks down, Flushing Avenue.

By Mr. Turkus:

Q. Mr. Fisher, I assume that you were in court when as prosecutor I spoke about the garment industry and the needle trades and the clothing industry. Is there anything in your present business connection or past business connection that brings you into contact with any manufacturer of garments?

A. None whatsoever.

Q. Or anyone that delivers clothing, that is, clothing truckers?

A. No.

Q. Do you have any contacts presently, or any in the past, with anybody in Brownsville or East New York?

A. None at all.

By the Court:

Q. May I ask who takes care of your business while you are on the jury?

A. We have a corporation. There is four of us in it, my brother-in-law and two other men.

Q. What is the name of the company?

A. J. P. Harrigan, Inc.

By Mr. Turkus:

Q. Is there a Mr. William Harrigan in the firm?

A. No.

Q. Or is he one of the relatives?

A. No.

Q. Because there was a William Harrigan who was a law clerk in my office.

A. No.

The Court: When I asked you if you were downtown I [fol. 2601] was thinking of Jim Fisher.

Q. Have you served as a juror heretofore in a criminal case?

A. Yes, sir.

Q. Was that in recent years?

A. Yes, last December, Judge Fitzgerald.

Q. Do you recall who the prosecutor was?

A. Not the name.

Q. Were any of these defense lawyers engaged in the defense of that case?

A. No, I do not know any one of them.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. I do not.

Q. I was not the prosecutor in the case?

A. You were not.

Q. I assume that you are in sympathy with law enforcement?

A. Yes, sir.

Q. Is there anything concerning any of the names that were mentioned that you should call to my attention?

A. No.

Q. Did you hear certain names mentioned from time to time—And part of the testimony in this case will emanate or come from one who is known under the law as an accomplice. The best way I can say it in plain English is it is one who himself has participated with others in the commission of crime and the crime charged in this indictment. Is there anything about the nature of a prosecution which rests in part upon the testimony of an accomplice which causes you to have any bias or prejudice against the prosecution?

A. No, sir.

Q. Do you have any bias or prejudice against the prosecutor, Judge O'Dwyer, who, in order to solve a murder, [fol. 2602] has accepted the testimony of an accomplice and uses it against the other perpetrators of the crime?

A. No.

Q. In the case in which you sat was there accomplice testimony, one of the men testifying against his former associates in the commission of the offense?

A. No.

Q. The Judge will charge you as to the rules of law that you apply to an accomplice witness. He will tell you these rules to guide you in ascertaining whether the accomplice speaks the truth. Is that clear to you?

A. Yes.

Q. Will you bear in mind that every test that the Judge gives you to apply, or every test that your ordinary common sense dictates to you should be applied to an accomplice witness is done for the sole issue of ascertaining does that accomplice speak the truth, not only about himself but about these other men who perpetrated the crime with him? Do you understand that?

A. I understand.

Q. Will you, sir, if accepted as a juror, devote your mental faculties to ascertaining does the accomplice who testifies here speak the truth about the group part that each one played as a combination, the part that each defendant played in the commission of the crime? Do you follow that?

A. Yes.

Q. And will you devote your mental faculties to find that out? It may be that you may not like an accomplice, as a matter of fact, you may dislike him intensely, but do you understand, Mr. Fisher, that that is not the test here, [fol. 2603] whether you dislike him or like him; do you understand that?

A. Yes.

Q. For example, you may feel that this accomplice tells the truth and you may feel that in addition to the accomplice's testimony there is other evidence from an independent source coming within the confines of the admonition that the Judge gives you, other proof which tends to connect each one of these defendants with the commission of the crime, and you may believe that beyond a reasonable doubt. If you feel that way, and your state of mind is such, is it not, that you would not acquit three guilty men because you do not like an accomplice?

A. No.

Q. Something has been said here by one of the lawyers who represents the defendant Buchalter that Buchalter

has been convicted of other crimes and is now serving a long jail term as penalty for those offenses. I want to know from you, is your state of mind such that you may relax your duty as a juror in this case or deviate from a result that is proper and just because he is presently incarcerated?

A. No.

Q. It has been pointed out too by one of the defense lawyers, and properly so, that the defendants at the bar of justice are required to meet the specific charge in the indictment, and this indictment is for the murder of a man named Joseph Rosen. By the same token, do you appreciate that the duty of the District Attorney is, and the law only permits this, that he establish guilt beyond a reasonable doubt on this charge and this charge alone; [fol. 2604] do you understand that?

A. Yes.

Q. In other words, we have no more to do and no less to do. The law does not permit less and it does not permit more. Do you understand that?

A. Yes.

Q. Having served in a prior case— Was it a capital case? By that I mean was the charge murder in one of its degrees.

A. Murder in the first degree.

Q. I take it, then, that you understand that the Judge in that case, as in this case, charged on certain benefits or rights that every defendant accused of crime must have in a criminal case. In this case, no matter what you heard in the other case, I assume it will be the same thing, because the law is settled in these cases, will you take the law implicitly from Judge Taylor?

A. Yes.

Q. In its every aspect, and with the intelligence that you have derived from your every-day business experience, apply it to the evidence in this case?

A. Yes.

Q. Should the Judge in substance charge you—I do not know whether he will use this language, but he may use similar language—should he charge you that the independent proof or the corroborative proof that is required need not support the testimony of the accomplice in its every detail, but it may be deemed sufficient by the jury, when believed, if it tends to connect the defendants and

each of them with the commission of the crime, will you [fol. 2605] accept that definition of law?

A. Yes.

Q. And apply it to the facts in this case?

A. Yes.

Q. Will you keep uppermost in your mind, and will you devote your mental faculties to this determination of this issue: Have these defendants and every one of them, Buchalter, Capone, and Weiss, been established guilty beyond a reasonable doubt or have The People failed to establish their guilt and are they innocent? Will you give to these defendants everything that the law of the land says they have given them, everything, the presumption of innocence, the doctrine of reasonable doubt, the burden of proof, and every rule of law and every safeguard that Judge Taylor will give you? Will you do that?

A. I will.

Q. Will you do this, too: After you hear all the evidence in the case, and every bit of it, if, after you hear it all, and then you have a reasonable doubt in your mind as to their guilt, acquit them; will you do that?

A. Yes.

Q. But after you get all the evidence in the case, and if your mind is satisfied that there are three guilty men here who operated as a combination and played the part that the witnesses in this case say they did in the commission of the Rosen murder, and you believe it beyond a reasonable doubt, will you tell us that in your verdict?

A. Yes.

Q. Without fear and without hesitation?

A. I will.

[fol. 2606] Q. Is there anything I should know about your qualification to sit here and do justice with your verdict?

A. Nothing. I have an open mind.

By Mr. Talley:

Q. Mr. Fisher, have you read anything about this case?

A. Nothing, practically, at all.

Q. Have you read anything that made any impression upon your mind, directly or indirectly, in any way?

A. No.

Q. That affects the guilt or innocence of these defendants?

A. No.

Q. As far as your mind is concerned, then, it is entirely open?

A. It is.

Q. To hear the evidence and pass upon it and decide accordingly?

A. Yes.

Q. If after hearing all the evidence you have a reasonable doubt in your mind as to the guilt of these defendants, will you acquit them without fear or hesitation?

A. I will.

Q. The court will charge you that they are presumed to be innocent until their guilt is established by evidence that satisfies the jury beyond a reasonable doubt. That is our American law. Will you give them that presumption?

A. I will.

Q. The court will charge you that if accomplices are called to testify against these defendants, or men who say they are accomplices, who will try and satisfy you that they are accomplices, if the Court charges you that the evidence of an [fol. 2607] accomplice must be corroborated by evidence quite independent of their testimony, will you insist upon that kind of evidence being presented and believed by you before you will vote to convict these defendants?

A. Yes.

Q. Have you sat in any other homicide case than the one you spoke of about last November?

A. No.

Q. That is the first and only time you sat in that type of case? And in that case there was a determination by the jury, was there?

A. Yes.

Q. Did you ever hear of these defendants before you came into this Court?

A. No.

Q. And you read nothing about them?

A. Nothing to speak of.

Q. When you say—

A. I saw the name of Lepke in the paper. That is about all I can remember.

Q. Did you read anything about it, having seen his name?

A. No.

Q. Did you read anything about either of the other two defendants in connection with that article that you read?

A. No.

Q. Did you form any impression at all from your reading of the name of Lepke in the papers, about him?

A. I did not even read it.

Q. You have no impression and you had none at any time?

A. I had none and I have none.

Q. Is there any reason that you know that we have not interrogated you about—And Lord knows we have interrogated you about enough.

A. I heard all the questions.

[fol. 2608] Q. Is there any reason that you know why you cannot sit as a fair and impartial juror in the trial of this case?

A. Nothing whatsoever.

Q. Any reason that you know that would prevent you from doing exact justice?

A. No.

Q. Between The People on one side and these defendants upon the other?

A. No.

Mr. Talley: I have no further questions.

By Mr. Fischbein:

Q. Mr. Fisher, you have been in the court-room for the past three days, have you?

A. Yes.

Q. And you have listened to questions propounded by Mr. Turkus and by the other lawyers who represent two of the other defendants?

A. Yes.

Q. And you have heard Mr. Turkus mention certain names of people in Brownsville, East New York?

A. Yes.

Q. You have heard him also mention names of individuals that come from the garment center?

A. Yes.

Q. You heard him speak, did you not, of some people that are connected with certain unions?

A. Yes.

Q. The fact that Mr. Turkus has mentioned those names, has that in any wise influenced you in so far as your mind

is free from prejudice or bias or sympathy at the present time?

A. No.

Q. It has not? Have you been impressed, sir, by anything that was stated in the court-room, anything at all? In [fol. 2609] other words, what I mean by that, Mr. Fisher, have you an impression which goes to your ability to serve as a fair and impartial juror by reason of anything that may have taken place in this court-room by way of questions or anything else?

A. No. I heard all the questions and I have an open mind.

Q. Prior to serving last December before Judge Fitzgerald, have you ever had any other jury service?

A. No.

Q. That was the only time that you were selected? That was the only time you served?

A. That was the only time I was ever really called.

Q. And prior to December of last year, have you ever been questioned by any lawyers or by any prosecutor?

A. No, I was always excused before.

Q. Before you were called to the jury box?

Mr. Climenko: No questions.

Mr. Turkus: Mr. Fisher is satisfactory to The People.

Mr. Climenko: May it please your Honor, the defendants challenge the gentleman peremptorily.

STUART ANDREWS, No. 3037, of 153 East 29th Street, Brooklyn, New York, was called and took Seat No. 12 in the jury box.

Mr. Climenko: May it please your Honor, all defense counsel respectfully request an opportunity to be heard before your Honor on a matter which all defense counsel deem of concern to themselves.

[fol. 2610] The Court: Is that the same matter I have just discussed?

Mr. Climenko: If it may be in the absence of the jury.

The Court: It won't be necessary for you all to come up. I just want to be enlightened. You come up, Judge Talley.

Mr. Talley: The same matter.

The Court: You can be the spokesman.

Mr. Talley: I would rather one of these other gentlemen was.

Mr. Climenko: Will your Honor permit two of us to come up?

The Court: Yes.

(Mr. Turkus, Mr. Rosenthal, and Mr. Climenko conferred with the Court at the bench.)

The Court: (To Juror No. 8) Mr. Strober, for reasons which are not to be discussed in open court, all counsel have agreed to excuse you, and the Court thinks the reason is sufficient. It does not reflect on you in any way at all.

Mr. Strober: I understand.

The Court: You know the reason?

Mr. Strober: I know.

The Court: Perfectly honorable, but it is believed [fol. 2611] advisable that you should not be embarrassed.

Mr. Strober: I appreciate that.

The Court: The other gentlemen may move up. Call one more.

JOHN J. RORKE of 1288 East 34th Street, was called and took Seat No. 12 in the jury box.

By the Court:

Q. Mr. Andrews, you are a salesman for what line of merchandise?

A. Envelope manufacturers, folding carton manufacturers.

Q. What concern?

A. P. L. Andrews Corporation.

Q. You are down on White Street, New York?

A. No, sir. The plant is in Glendale, Long Island, and my sales office is in New York City.

Q. Isn't that in Manhattan?

A. No, that is another firm, that is the H. P. Andrews firm.

Q. Harold Andrews?

A. Harold Percy, I believe.

Q. They moved to Manhattan?

A. That is correct.

Q. You live between Tilden Avenue and Beverly?

A. Yes, sir.

Q. One of those Calder houses?

A. That is correct.

Q. Where is your office located?

A. At 1328 Broadway.

Q. And you have been connected how long?

A. About twenty years.

Q. And before that?

A. I served in the American Expeditionary Forces during the war. Been with the organization since I returned from France.

Q. What outfit were you in?

A. 106th Infantry, 27th Division.

Q. And before that?

A. I left school to join the Army.

Q. Do you belong to the Legion?

A. I am a member of the Veterans of Foreign Wars.

By Mr. Turkus:

Q. Mr. Andrews, the Judge has brought out your background in great detail and saved me all that bother. I can get right down to this point now. There is nothing in your background that brings you into contact with the garment industry, the needle trades, or the manufacture of clothes?

A. Not at all.

Q. No clothing truckers?

By the Court:

Q. Just one question. In making these cartons and paper boxes, you fill orders telephoned to your concern from various dealers in merchandise in the Borough of Manhattan?

A. Yes, we serve the large manufacturer or various industries throughout the country, not directly connected with the garment trade.

Q. You do include the garment trade?

A. No, it would not.

Q. What particular kinds?

A. Well, for the packaging of drugs and foods and textiles, hosiery. That is about as close an approach as we make to the garment trade.

Q. None of the light paper boxes?

A. No.

Q. All the heavy cartons?

[fol. 2613] A. No, quite the contrary, ours is more the smaller units. Ours is a package house.

Q. They are more sturdy than used in garment trade?

A. Quite the contrary. Your garment boxes are a large size type of box. Ours is a smaller unit, more of a counter unit, so to speak.

By Mr. Turkus:

Q. And the work that you do is sales representative?

A. That is right.

Q. In regards to Brownsville or East New York, can I go along—no contacts there of any kind, nature, or have you?

A. Not familiar at all with the section.

Q. Did you ever serve as a juror in any type of litigation?

A. To the various minor cases in years past.

Q. Were they civil cases, Mr. Andrews?

A. Those were. I served on one criminal case.

Q. Has it been in this court?

A. No, it was two years or more ago, still in the old building.

Q. It may not have been a criminal case, because we have been here more than two years in this building. Unless it was years ago, when it was in Oxford Street, that would be considerably more than two years ago, but it does not make any difference. I do not care whether you served or you have not served; will you take the law from Judge Taylor if you serve in this case?

A. I certainly will.

Q. Every aspect you will take?

A. Right.

[fol. 2614] Q. And will you, with common sense and reason, apply it to the facts in this case?

A. Right.

Q. Is there anything as prosecutor that we should know about your qualifications to sit?

A. Nothing I can think of.

Q. Part of the testimony in this case, as has been indicated to every juror who has been accepted, will emanate from an accomplice. I take it that by now you understand what an accomplice is?

A. Correct.

Q. Have you any bias against Judge O'Dwyer, the prosecutor of the county, or against the prosecution wherein part of the testimony will emanate from an accomplice?

A. None at all.

Q. Will you apply all the tests that Judge Taylor gives you and that your common sense dictates to you should be applied to an accomplice witness to ascertain does he speak the truth about these men on trial and about the part that each one of them played as a group or combination in the killing of the victim named in this indictment?

Mr. Climenko: I object to that question.

The Court: Qualify your question.

Q. Don't think that anything that I say is evidence in the case. You will get your evidence from witnesses here. What I want to know is this: Whether you will devote your mental faculties to find out whether the accomplice in the case not only speaks the truth about these men on trial and the part that each of them, we allege, played in the [fol. 2615] commission of the murder charged in the indictment.

A. Right.

Q. And will that be the way you devote your mental faculties to see whether or not you are getting the truth from that accomplice or that associate of theirs when he speaks about them?

A. Exactly.

Q. Now, as I said to other jurors, you may not like an accomplice. My feelings toward an accomplice or your feelings toward an accomplice mean little. Our job is, to find out does he speak the truth about them, as we have discussed. Do you understand that?

A. Yes.

Q. If you feel that these men on trial are guilty of murder in the first degree and that has been established to your satisfaction beyond a reasonable doubt, is your state of mind such that you won't acquit them because you do not like an accomplice? You won't acquit three guilty men because you do not like the accomplice, would you?

A. No, of course not.

Q. It has been pointed out by one of the lawyers for Buchalter that Buchalter has been convicted of other crimes and as penalty he is serving a long jail term for those crimes. Would you relax your duty or deviate from a proper result in this case because of his present incarceration in jail?

A. No.

Q. Will you devote your mental faculties to ascertain is he guilty or innocent and are these other defendants guilty or innocent of the crime charged in this indictment?

A. Absolutely.

[fol. 2616] Q. You will be told by the Judge that there cannot be a conviction upon the unsupported testimony of an accomplice. I won't go into any detailed discussion of it. The Judge will tell you the law after you hear all the evidence, and that is the time you can use it. You cannot use it yet. You do not know what the case is all about, but I want to know this: If he tells you that the law of corroboration does not require the prosecution to establish and corroborate in detail everything the accomplice says, but that the supporting testimony, if believed by the jury, may be deemed sufficient if it tends to connect the defendants with the commission of the crime, will you follow that instruction of law?

A. I will.

Q. It has also been pointed out by one of the lawyers for these defendants, and it applies to all the defendants and it applies to every criminal case, the defendant meets only the charge in the indictment. The prosecutor establishes that charge and that alone. That is all he is allowed to do under the laws of evidence. Will you devote your mental faculties to find out, do we establish guilt here of this Rosen indictment beyond a reasonable doubt?

A. Yes.

Q. After you hear all the evidence in the case, Mr. Andrews, and after you hear everything that Judge O'Dwyer will submit to this Court and jury bearing upon the guilt of these defendants, if you entertain then a reasonable doubt about their guilt, you acquit them, do you understand that?

A. Yes.

[fol. 2617] Q. And after you get all the evidence in this case, if you are satisfied beyond a reasonable doubt that there are three guilty men here, three of this combination or group who participated in the murder of Joseph Rosen as charged in this indictment, will you find them guilty without fear and without hesitation?

A. I will.

Q. Is there anything I should know as prosecutor before I pass on, as to your qualifications?

A. Nothing that I can think of.

Q. Mr. Rorke, do you live at East 34th Street?

A. I do.

Q. Is that Flatbush?

A. Yes.

Q. Have you lived there for a number of years?

A. Five years.

Q. And before that time where did you live?

A. Avenue K, always in the Flatbush section.

By the Court:

Q. That is near M or L?

A. It is between Avenue K and Avenue L.

Q. Near the Nostrand Avenue subway station?

A. About four or five blocks.

Q. It is up towards the Highway?

A. Two blocks from the Highway.

Q. Switchman for what?

A. New York Telephone.

Q. Employed for how long?

A. Twelve years.

Q. How old are you?

A. Thirty-two.

[fol. 2618] Q. This is your first position?

A. No, sir.

Q. Before that what line were you in?

A. I was employed by the Chatham & Phoenix Bank.

Q. In what capacity?

A. I was teller when I left. Started as clerk.

Q. John Street and Broadway?

A. Bowery and Grand Street.

Q. Branch?

A. Branch office.

Q. Are you married or unmarried?

A. Married.

Q. Who is taking care of your house when you are away on jury service?

A. Wife, I guess.

Q. She won't fret about it, will she?

A. I don't think so.

The Court: All right, go ahead.

By Mr. Turkus:

Q. All right, Mr. Rorke, the Judge has simplified my questioning of you, too. I take it from your background that

I can forget all about any connection with the garment industry, clothing industry, union officials of the Amalgamated or any of those other things that I inquired from other jurors; is that correct?

A. Yes.

Q. Exclude Brownsville-East New York?

A. Yes.

Q. Do you have any scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. In sympathy with law enforcement?

A. Yes, sir.

Q. I accepted as a juror, will you do justice by your verdict in the case?

A. Yes, sir.

[fol. 2619] Q. Will you give to these defendants every thing that the Judge says they should have, the benefit of every law of the land and every constitutional right and safeguard?

A. Yes.

Q. And if, after you hear all the evidence in this case, if you then have a reasonable doubt about the guilt of any one of them, you will acquit that one or all of them; will you do that?

A. Yes.

Q. And if I satisfy you—and I say I, as representative of Judge O'Dwyer, the District Attorney of the County—if the evidence produced here by him in this court-room satisfies your conscience that these three men are guilty of murder in the first degree, that each one played a part in the commission of this murder, played a part as a combination or group that is charged in the indictment, will you say that in your verdict without fear or hesitation?

A. Yes, sir.

Q. Do you find any fault with the prosecutor of the county, or do you have any prejudice against the prosecutor, Judge O'Dwyer, who, in order to solve a murder case, accepts the testimony of an accomplice? We have been over that many times. If you have any bias or prejudice, tell me about it.

A. (No answer.)

Q. All these rules and tests that your common sense will tell you that you should apply to an accomplice witness, the care, caution, and suspicion and every vicious or immoral

act an accomplice may have committed during his lifetime. [fol. 2620] those are all tests to find out does he speak the truth, not only about himself, but about them. Do you understand that, Mr. Rorke?

A. Yes.

Q. As I discussed with all the other jurors that have been accepted here, it is not a question of whether you like the accomplice or whether you dislike him or whether anybody likes him. In criminal cases sometimes you have to deal with accomplices. The test is, if you are satisfied from the evidence in this case beyond a reasonable doubt that here are three guilty men, three who participated in the murder, you do not acquit them because you do not like an accomplice, do you understand?

A. Yes.

Q. That sentence of the defendant Buchalter, will that cause you to relax or deviate from the proper determination in this case?

A. No.

Q. You understand the rule that the defendants meet the one charge in the indictment, that is all the prosecutor can establish, guilty beyond reasonable doubt of this charge here?

A. Yes.

Q. Is there anything I should know as Judge O'Dwyer's representative in this prosecution, about your qualification or ability to sit here and do justice in this case?

A. I am a nephew of Inspector Rorke.

Q. Inspector Rorke does not figure in this case. All that I want to know is this, from you, Mr. Rorke, whether [fol. 2621] the Inspector is your uncle or not; we are here trying these three men on a charge of murder in the first degree; If after you get all the evidence in the case, if then you entertain a reasonable doubt about their guilt or any one of them, will you resolve that to the benefit of the one against whom you have the doubt, where there is a doubt? If, on the other hand, you are satisfied from the evidence that the District Attorney of the county presents in this court-room, that they are guilty and you believe it beyond a reasonable doubt, will you say it?

A. Yes.

Q. Is there anything that would prevent you from rendering a just verdict under your oath?

A. No.

By Mr. Climenko:

Q. Mr. Andrews, I will address my questions to you first and I will stand here so as to make sure that I talk loud enough to you and you to me, so our friends further in the court-room can hear us. You did on one occasion serve as the juror in a criminal case?

A. Yes.

Q. A couple of years ago?

A. Yes, as I recall.

Q. But I do not recall from your answer whether that was a capital case.

A. It was.

Q. Mr. Turkus was not the Assistant District Attorney in that case?

A. No, he was not.

Q. Do you remember who the Judge was?

A. I believe it was Judge Fitzgerald.

[fol. 2022] Q. And you are not clear as to whether the trial was held in this building or not?

A. No, I am not. It goes back a couple of years.

Q. You cannot recall, as you sit here now, just what year it was, although you think it was at least two years ago?

A. I believe it was. I was called many times since, but I have not gotten as far as the jury box.

Q. You understand from my questions which I put to you as attorney at this moment for the defendant Buchalter, that I am inquiring only for the purpose of trying to ascertain whether you can sit impartially in the trial of this case. Have you read about this case at any time?

A. I have, in the usual cursory reading of the newspapers.

Q. Have you also read about the defendants at any time?

A. Just what would appear in those articles which I might have glanced through.

Q. May I ask—I am trying to get directly to the point—did any of the matter which you read appear in the *Mirror*, *Daily Mirror*?

A. I never read it.

Q. So we can exclude that altogether. The other tabloid is the *Nous*. Do you ever read that?

A. No.

Q. Then there is the Hearst paper in New York called the *Journal-American*.

A. Another one.

Q. You never read that at all? I take it then that your morning paper is either the *Times* or the *Tribune* and your [fol. 2623] evening paper is either the *Post* or the *Sun* or the *Telegram*?

A. I see the *Sun* and *Telegram*.

Q. Do you read a publication that is called *P. M.*?

A. No.

Q. Never read anything about this case in that paper?

A. No.

Q. Did you ever read through from beginning to end any particular so-called story about this case or any of the people who are named in this indictment?

A. No, I have not.

Q. So then I may assume as a fact that whatever reading you have done in connection with this matter is purely a desultory and casual reading that really confronted you?

A. That is it.

Q. You never looked to read about this case?

A. No.

Q. And if you saw a headline about it, it made that much of an impression upon you and then you went on to other matters as to which you were more interested; is that correct?

A. Yes.

Q. Of course, you realize that this is a case that has received newspaper attention, but I can take it as a fact from you, Mr. Andrews, that you were not a person who read with interest about this case?

A. No, none.

Q. And I can also take it as a fact that you did not have any impression about this case in consequence of any newspaper reading?

A. None.

Q. Is that correct?

A. That is correct.

Q. Have you ever at any time heard about the defendants or any of them?

A. No.

[fol. 2624] Q. And I am now asking you apart from newspaper reading.

A. None.

Q. Then may I assume you have no impression, not only do you not have any impression about the case but you have no impression about the defendants or any of them?

A. None whatsoever.

Q. And you are acquainted with the precepts of our law, the fact that all defendants are presumed to be innocent? You understand that?

A. I do.

Q. That the indictment, as the lawyers says, has no probative effect?

A. Yes.

Q. Which means now that the mere fact that a charge has been made is in no sense and to no extent and to no degree proof of that charge?

A. That is right.

Q. And at the same time that the charge is made the defendants are presumed to be innocent thereof; is that correct?

A. Yes, as I understand it.

Q. And assuming that the Court instructs you, were you to be sworn as a juror here and act as a juror in the trial of this case, that the presumption continues from the beginning to the conclusion of the case.

A. Right.

Q. That these defendants are presumed to be innocent of that charge, you will have no difficulty in following that instruction?

A. None at all.

[fol. 2625] Q. Because that is a concept of law with which you are thoroughly in accord; is that correct?

A. That is right.

Q. Assuming that you were to be sworn as a juror and act as one in this case, you understand, of course, that it will be your duty as a juror to decide as to the honesty of persons who take the stand?

A. Yes.

Q. Roughly, then, the function of the Judge is to instruct you as to the law?

A. Right.

Q. The Judge is the sole judge of the law, and you and your fellow jurors are the sole judges of the facts?

A. Right.

Q. That in a very rough way is the distribution of labor in the trial of a case, you understand?

A. Yes.

Q. You understand also no one can divide the responsibility with Judge Taylor as to the instructions as to law?

A. Right.

Q. That is Judge Taylor's own province, you understand that?

A. Yes.

Q. By the same token, you understand that it is the jurors' undivided responsibility to pass upon the facts?

A. Right.

Q. You understand that?

A. Yes.

Q. You also understand, I take it, that in assessing the honesty or dishonesty of any witness who takes the stand in this case, that you are to employ your general intelligence and all of the standards which you normally employ in the discharge of the duties of your every-day life; is that correct?

A. Right.

[fol. 2626] Q. And so, in consequence of that, if a man takes the stand and admits that on former occasions he has committed perjury, that on other occasions in other courts, of jurisdiction equal to this, when he solemnly swore that he would tell the truth and he then proceeded to lie in violation of that oath, you will take that into consideration as a circumstance in determining whether or not you are going to take his word in this case; is that correct?

A. Yes.

Q. That is certainly a test that you would employ in your normal, every day life, is that so?

A. Yes.

Q. By the same token, if a man takes the stand in this case and it becomes apparent to you, either because of questions which Mr. Turkus puts to him or questions which counsel for the defense puts, that powerful motives are operating upon that man to perhaps cause him to tell a lie, to deviate from the truth, you will take those circumstances into consideration in deciding whether or not he is telling the truth, isn't that so?

A. I should have to be the judge.

Q. Certainly. You will employ those same standards whether that particular witness be produced by the District Attorney or by anybody else, isn't that so?

A. Right.

Q. The mere fact that a witness is called to the stand by the District Attorney is not necessarily an earnest in your mind of the truth of what he says, isn't that so?

A. That is right.

[fol. 2627] Q. He has to be subjected to all of the normal tests of credibility or honesty that you would attach to anybody with whom you conduct a transaction in your normal life; isn't that so?

A. That is right.

Q. Of course, the Court will instruct you that punishment is not for the jury, as it is not, but you realize that this is a serious issue because this is what we call a capital case; correct?

A. Yes.

Q. And, that being so, you will attach to your job as a juror of sifting false from the truth the same degree of importance that you will attach to anything affecting your own interest; is that so?

A. Right.

Q. In other words, the obligation to find the truth is a very sacred, solemn one in this case; is that correct?

A. It is.

Q. Mr. Turkus has said to you and to others—he has asked you this question: Supposing an accomplice takes the stand, you won't reject his story because you don't like him? You remember that question?

A. Yes.

Q. Of course, nobody expects that you as a juror or anybody else in this court-room in any other capacity needs to develop an affection with respect to a witness. You understand that, of course.

You also understand that the word "like" may be used in a different sense, in the sense of respect, for instance? Isn't that so?

A. That is correct.

[fol. 2628] Q. So if on a general appraisal of the personality and character of an accomplice, as it is revealed by his direct examination and the facts that come out in his cross-examination, you come to the conclusion that you so dislike

that man, so dislike that man that you would not take his word——

Mr. Turkus: I object to this. This is going into a psychological discussion.

Mr. Climenko: Oh, No, it is only a question of language, language that you used.

The Court: Sustained.

Mr. Climenko: Exception.

Q. In other words, you realize that whether or not you take a man's word depends on whether or not you respect him to that extent, isn't that so?

Mr. Turkus: Objected to. You do not have to respect any accomplice.

The Court: Sustained.

Q. Do you realize that you may so disrespect a man that you cannot take his word because of his own acknowledgments and admissions about himself?

Mr. Turkus: Objected to. That is not the test. Does he tell the truth about these men? That is the test.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Do you realize, Mr. Andrews, that in deciding whether [fol. 2629] or not you can take a witness's word you must take into account everything that that man says about himself? Isn't that so?

By the Court:

Q. You must consider it. You will consider it for what it is worth?

A. Absolutely.

Q. Use common sense?

A. That is it.

By Mr. Climenko:

Q. You will apply the same standards of common sense in appraising the honesty or trustworthiness of any witness as you would apply to him in the course of your own business affairs. You realize, of course, that it is your obligation under your oath to respect that portion of the criminal law of the State of New York which requires a jury to vote Not Guilty if, after hearing the whole of the

case, he entertains a reasonable doubt about the guilt of the defendant. You understand that?

A. I understand.

Q. You understand that these defendants nor any one of them are required to demonstrate their innocence to you, you understand that?

A. I do.

Q. That being so, you will not hold it against any particular defendant or all of them if that should prove to be the case, that they do not themselves either adduce any testimony through other witnesses or themselves take the stand? You understand that?

A. I do.

[fol. 2630] Q. Correct?

A. That is correct.

Q. And you understand also that you have both an individual duty as a juror and a collective duty, that your collective duty, which I will come to first, is one to come to your own conclusions about the testimony and then discuss it with your fellow jurors?

A. Right.

Q. To try to come to an agreement with them if you can through the use of your mental processes and theirs, too, isn't that so?

A. That is right.

Q. You also have an individual obligation, and that is that in the event that through reasoning in connection with the evidence you cannot come to agreement with them, you will adhere to your own conscientious conclusions; you understand that?

A. That is correct.

Q. It may prove a hardship for you to do that, in the sense that you may find yourself in a minority, or you may find that the hours of deliberation become a burden to everybody in the jury room. Will you abrogate your own opinion because of such consideration or inconvenience?

A. No.

Q. Have you heard any lectures on crime by any members of the staff of the District Attorney?

A. None at all.

Q. Are you acquainted with any members of the police force?

A. I am. I perhaps should have mentioned this to Mr. Turkus.

Q. Yes?

A. It slipped me for a moment. My next door neighbor is a plain-clothes patrolman. Through him I met some [fol. 2631] of his friends. I thought it should be brought out, at least now.

Q. It is not too late. I take it that that acquaintanceship is the casual kind that one normally has with a next-door neighbor. You do not class it as an intimate friendship?

A. We are rather intimate friends.

Q. May I know his name?

A. Francis P. Garvey.

Q. He is a patrolman?

A. Plain-clothes patrolman.

Q. Is he assigned in Brooklyn?

A. In New York, with Inspector Henry——

Q. Is that a specialized squad?

A. I don't believe so, simply plain-clothes patrol.

Q. Have you met other friends of his on the force?

A. Yes, I have.

Q. Do you recall their names?

A. One of them is Edward Meyer. He is a plain clothes patrolman in the Borough Hall section of Brooklyn, and he is the only fellow intimately.

Q. So those are the only three whose acquaintance that you have you think it is important to mention?

A. That is it. I just mention it.

Q. Have you gone out socially with these gentlemen?

A. Yes.

Q. Spent evenings in their company?

A. That is right.

Q. Entertained them at your home?

A. Yes.

Q. I will ask this general question about it all as best I can: Is there anything about the fact that you have on [fol. 2632] enjoyed the friendship of those gentlemen, been intimate with them, have you had any experience in consequence of that intimacy which would in any way color your thinking as a juror about this case?

A. None.

Q. Has this case ever been mentioned during the course of your friendship and being with those gentlemen?

A. No, I don't believe so.

Q. That brings me to something else. You have been asked whether, if you were convinced beyond a reason-

able doubt of the guilt of the defendants, you would, without reservation, vote for a verdict of guilty.

A. That is right.

Q. By the same token, this is a case which you realize has been discussed, even though you have not been particularly interested in it, and you are a personal friend of members of the police force. Now, is there anything in that fact which you have just been good enough to tell me about, anything else which I have not asked about, in the background of your family life, your business life, your general attitude, which would cause you to be reticent about returning a verdict of Not Guilty if at the conclusion of the entire case you should entertain a reasonable doubt about the guilt of the defendants or any of them?

A. Nothing.

Q. Mr. Andrews, there is just one thing I am interested in, and I will try to make that as short as possible. You have been here since Tuesday morning?

[fol. 2633] A. No, the Court excused me until this morning.

Q. There have been made mention of names of members of unions. You have not heard the names of any union officials?

A. None mentioned here today.

Q. The fact that those names have been mentioned would not influence you one way or the other, particularly if their names were never again referred to once the trial actually started.

A. No.

Q. Assume that you were chosen as a juror and the trial began and the Court in the proper discharge of his duties as judge presiding over this trial should determine that the jury ought to be kept together during the time that the case goes on, during the duration of the trial; are you confident that you would not even unconsciously let that fact militate in your mind against the defendants or any one of them?

A. Not at all. I rather expect that. Not with pleasant anticipation.

Q. No.

A. Still and all, it would not prejudice me.

Q. It is not a circumstance—

A. It is one's duty.

Q. The fact that the Court thinks that is necessary is not a circumstance that you would permit to color your thinking about the defendants or any one of them?

A. It will not.

Q. You know that pretty soon the people of New York City will vote for a Mayor and the District Attorney of Kings County is happily the nominee of his party, in that campaign. You have heard that?

A. Yes.

[fol. 2634] Q. And the District Attorney is a person who enjoys the regard of his fellow citizens in Kings County. The mere fact that his reputation may be what it is is a circumstance which you realize has nothing to do with the virtues or the merits of this case; is that correct?

A. Yes.

Q. The mere fact that you may like or dislike the Democratic nominee for Mayor of New York City is a circumstance which cannot have any part in thinking about this case. We are agreed on that proposition?

A. I am.

Q. The mere fact that the District Attorney happens to be a nominee for elective office is a circumstance which does not enhance the credibility of any witness that Mr. Turkus calls to the witness stand; isn't that so?

A. That is correct.

Q. And the mere fact we have the accident of a political election coming within the next three weeks is a circumstance which has nothing to do with this case whatsoever? You would not permit it to enter into your deliberation?

A. I would not.

Q. Something has been said about the fact that the defendant Mr. Buchalter has been previously convicted of crime. You realize, do you not, that the only issue in this case, is the charge in this particular indictment. You realize that?

A. That is true.

Q. Nothing about any prior conviction has anything to do with the charge here; you realize that?

A. I do.

Q. The mere fact that such a charge is made is, as we said before, not proof. On the contrary, the defendant is [fol. 2635] presumed to be innocent, and that presumption attaches to Mr. Buchalter in spite of and independently of

any prior conviction. You realize whatever conviction he may have been subject to in the past is something he has paid the penalty for or is paying the penalty for, and the fact that he has such a conviction is a circumstance you would not permit for one moment to enter into your thoughts about him and his innocence or guilt in this case; is that correct.

A. That is correct.

Q. Because any other mental approach would not be giving him a fair deal in the trial of this case, isn't that so?

A. That is correct.

Q. Do you know of anything—because I want to shorten this—do you know of anything as you sit here now which gives you any mental reservation about your acting as a fair juror in this case without sympathy to our client or without any prejudice against him? Do you know of any reason that you cannot act fairly in that sense?

A. No, I don't.

Mr. Climenko: Thank you.

By Mr. Barshay:

Q. Mr. Rorke, do I understand that you are related to a police inspector?

A. I am.

Q. And may I know his full name?

A. Thomas H. Rorke.

Q. Where is he assigned.

A. Assigned in Brooklyn, in charge of traffic in Brooklyn.

Q. How long has he been in the department, do you know?

[fol. 2636] A. Thirty-some-odd years, I guess.

Q. So that he has held many posts, to your knowledge?

A. To the best of my knowledge, the past ten years or twelve years he has been in various traffic posts.

Q. Do you see him often?

A. Occasionally.

Q. You take pride in his advancement as a police inspector, naturally?

A. Purely his accomplishments.

Q. That is correct. Have you discussed any police work [fol. 2637] with him at any time?

A. Never discuss any police work.

Q. Haven't you at any time heard him discuss his work?

A. No, sir.

Q. He has friends in the police department, I take it, whom you know?

A. Personal friends?

Q. Yes, any way you put it.

A. None that I know of.

Q. Did you ever meet anybody in the police department through him?

A. No, sir.

Q. Have you told him that you had received a jury notice?

A. No, sir.

Q. You were a juror, rather, a prospective juror, on a prior occasion in this court?

A. Yes.

Q. That was a blue ribbon jury?

A. That is right.

Q. Mr. Turkus was the prosecutor?

A. That is right.

Q. At that time, sir, you were questioned by Mr. Turkus?

A. Yes.

Q. Thereafter that fact came out, did it not?

A. Not while Mr. Turkus was——

Q. It came out?

A. It came out during the questioning.

Q. Then the lawyer for the defendant questioned you, too?

A. That is right?

Q. And I am not assuming too much to say that he questioned you almost along the same lines that the jurors were questioned here in respect to prejudice and so forth?

A. Yes.

Q. And some of the names that you were questioned [fol. 2638] about were some of the names that you heard here while you were sitting here waiting to be called?

A. That is something I had not been paying much attention to, names that have been mentioned.

Q. You heard the name "Buggsie" Goldstein then?

A. No, I did not hear it then.

Q. You heard it here? Did you hear the name Maione?

A. Of course I heard that.

Mr. Turkus: Just a minute. We are getting it confused, whether it was heard then or now.

Mr. Barshay: We are not getting confused.

Mr. Turkus: I am getting confused.

The Court: I understand Mr. Barshay is asking if the gentleman remembers if those names were mentioned when he was called for jury service on the previous case.

Q. That is right?

A. The first name that he mentioned was not mentioned on the previous occasion.

Q. Do you remember any of those names?

A. No, sir, I do not.

Q. You mentioned one you did remember.

A. Maione, yes, of course.

By the Court:

Q. Do they mean anything to you?

A. No, sir, they do not.

By Mr. Barshay:

Q. Well, about how many names would you say that [fol. 2639] were mentioned then that you recollect as being mentioned here today or yesterday or the day before?

A. One of the defendants.

Q. Maione? And one of the defendants at the present time?

A. Maione.

Q. Was mentioned then, too?

A. That is correct.

Q. Was Pittsburgh Phil Strauss mentioned then?

A. No, sir. I don't believe the questioning had gotten that far with the defense when the question arose as to my having any relations in the police department. When that question arose I was immediately excused.

Q. And thereafter did you follow the case with interest in the press? Did you read about it?

A. Only to the effect of the decision that was arrived at.

Q. I do not know whether you remember all the counsel in that case.

A. I do remember two of them.

Q. I was not one?

A. Just Mr. Rosenthal was there of the present group and Mr. Turkus.

Q. Do you feel any resentment then because you were excused, not for any personal reason, but because of this relationship with a police inspector?

A. No.

Mr. Barshay: Now, with your Honor's permission, may we see you for a minute?

The Court: Yes.

(Mr. Turkus, Mr. Talley, Mr. Barshay, and Mr. Fishbein conferred with the Court at the bench.)

[fol. 2640] By the Court:

Q. Mr. Rorke, how close are you to your uncle, the inspector? How intimate? Some relatives never see one another or care.

A. He only lives two blocks from me. I might happen to pass him on the street. I don't make it a point to go and visit him.

Q. Do you visit one another's homes?

A. No, sir. I mean, if we happen to be in the neighborhood he might drop in or I have reason to go over and borrow some tool I will go over.

Q. Do you visit at one another's homes?

A. No, we do not make it a point.

Q. At Christmas do you have get-together parties?

A. No, sir, he has his own family to maintain over there?

Q. How is that?

A. He has his own family there.

Q. The families are not very close?

A. I would not say they are close, but by the same token they are not far apart, either.

Q. They are not enemies. Well, at any rate, there is a feeling of distance, apparently, because you don't intermingle in one another's homes; you don't entertain one another?

A. No, sir.

Q. Have you ever discussed police matters with your uncle?

A. Just in so far as traffic problems that might come up.

Q. Not in connection with any of Mr. O'Dwyer's work?

A. No, sir, I have never discussed it at all.

Q. He has never expressed any opinion to you on that? [fol. 2641] A. As I said on this previous occasion, I mention the fact that I was called for jury and that I had been turned down. He said "I guess you are not sorry for that," and that was the end of the conversation.

Q. That was just a congratulation?

A. That is right. I happened to meet him on the street.

Q. You have not formed any opinion concerning any of these defendants from any contact with your uncle or his family?

A. Oh, no, sir, not at all.

Q. Is there any reason why it would embarrass you with your uncle and his family for you to render a verdict which reflected your own conclusion?

A. Not that I know of.

Q. Independently arrived at?

A. Not that I know of, no.

Q. You are under no obligation to your uncle?

A. No, sir, none whatsoever.

Q. You would not care whether he liked it or not?

A. That is quite right.

Q. You mentioned something before—I will put it this way—was there anything connected with that other case in connection with any one of these defendants that caused you to have an impression adverse to one of these defendants?

A. No, sir.

Q. Just yes, or no.

A. No, sir.

Mr. Talley: If your Honor pleases, I offer a challenge for implied bias in this case.

The Court: Try the challenge.

[fol. 2642] JOHN J. RORKE, residing at 1288 East 34th Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Talley:

Q. Mr. Rorke, you are a nephew of Police Inspector Rorke?

A. That is correct.

Q. Police Department, New York City. And you live within a block of him?

A. About two blocks.

Q. And see him frequently and talk with him frequently?

A. I do not see him so frequently. If I happen to be passing in the street, say hello, and that's the extent of the conversation unless something else comes up.

Q. And you visit his house occasionally?

A. Very seldom.

Q. Does he come into yours?

A. Very seldom.

Q. But he does come in?

A. He has been there, yes.

Q. You were called as a juror in the spring of this year, were you not, in May, five or six months ago you say?

A. That is correct.

Q. And that was a homicide case?

A. No, a capital case.

Q. Murder case. Murder and homicide.

The Court: Was I the Judge.

The Witness: Yes, sir.

Q. And Mr. Turkus was the prosecutor in that case?

A. That is correct.

Q. And one of the counsel now engaged as counsel to the defense was counsel for one of the defendants?

A. Mr. Rosenthal.

[fol. 2643] Q. And Mr. Rosenthal challenged you as a juror, did he not?

A. He did not challenge me, that is, I was not put in the box here. He was questioning me.

Q. Yes. And after you were questioned he presented a challenge?

Mr. Turkus: No, he did not.

A. No, he did not present a challenge.

Q. Who did?

A. Not as I understand a challenge. In my estimation a challenge is when I am put in the box.

By the Court:

Q. Do you attribute your excuse to either of the counsel in the case?

A. Yes, sir.

Q. Do you charge it against one particularly?

A. Yes, I would charge it against one who was questioning.

Q. Do you carry a grudge?

A. No.

Q. Does it make a particle of difference?

A. Not a particle of difference.

Q. You would not be sore on counsel?

A. Of course not.

By Mr. Talley:

Q. Speak up.

A. As I remember this thing, it was a Friday night. It was a week—I believe your Honor wanted to get the jury chosen that night.

Q. It is not necessary, Mr. Rorke. All we want to have on the record—

The Court: We don't need to go into that detail.

[fol. 2644] Q. All we want upon the record is that you were challenged when you were called as a juror in that case, were you not?

A. I do not understand what you mean by a challenge.

Q. You were excused from serving, weren't you?

A. Yes, sir.

Q. At the request of one of the defendants' counsel in that case?

A. That is correct.

Q. You were not excused as the result of any statement made by the District Attorney, were you?

A. No, sir.

Q. So that he was not responsible for your being excused; it was something that was said by Mr. Rosenthal, a counsel in this case, to the Judge, that resulted in your being let out of the jury box?

A. That is correct.

Q. A rather circumlocutious way of putting it, but that is about it, isn't it? In that case there were certain names that you remembered, were there not?

A. Yes, sir.

Q. And at least one of those names you have heard since you have been called in this case, isn't that so; just yes or no?

A. That is right, yes, sir.

Mr. Talley: I submit——

Mr. Turkus: I have not finished.

Mr. Talley: I submit, appealing to the discretion of the Court, that my challenge should be sustained in this case.

The Court: Any other counsel for defense?

Mr. Cuff: We all join.

The Court: Any other counsel wish to question the talesman?

[fol. 2645] By Mr. Rosenthal:

Q. Mr. Rorke, there were other defense counsel in that particular trial in which you were called, is that right?

A. I believe there was one other that I remember.

Q. And in the course of questioning it developed that your uncle at that time was Police Inspector Rorke?

A. That is correct.

Q. And at that time weren't you questioned also as to your association, that is your friendship, with your uncle and how close it was? Do you recall?

A. No, sir, I was not.

Q. You were not asked any questions concerning how close you were to your uncle or how often you saw him?

A. No, sir.

Q. That is your recollection?

A. That is correct.

Q. You were living then a short distance away from him?

A. Same situation.

Q. Did you prior to May of this year see your uncle more often than you did subsequent?

A. No, sir.

Q. You do see him practically three or four times a week, don't you?

A. No, sir; I have not seen him now in two months or more, I don't believe.

Q. Did you follow with any interest the development of the trial where you were excused?

A. The previous trial?

Q. Yes, where you were excused. Did you read newspapers?

A. I just made it a point to——

Q. Please——

Mr. Turkus: He is answering you, because he has answered [fol. 2646] when he was in there. I object to him being shut off.

Mr. Rosenthal: I want to know whether he read newspapers, without quoting what he may or may not have read in the newspapers.

Mr. Turkus: He stated before, as he was about to state now—I am not going to say what it was—let him say it.

The Court: Overruled.

Q. Did you read any newspapers in connection with the evidence in that trial?

A. No, sir, I did not.

Q. At any time?

A. No, sir.

Q. So that you read nothing about the progress of that trial until its conclusion?

A. That is correct, sir.

Q. Did you converse with anybody as to that trial?

A. Just the point that I had been chosen as a talesman for it.

Q. Other than with your uncle, did you converse with any other person?

A. People at my place of business, yes.

Mr. Rosenthal: That is all.

The Court: Any other counsel for defense?

Mr. Climenko: No, thank you.

By Mr. Turkus:

Q. Is the name that you speak of, Mr. Rorke, the name of Maione?

Mr. Rosenthal: I object to any mention. There was an objection at the time that one of the counsel—

The Court: Sustained.

Mr. Turkus: There is a record made here by Judge Talley [fol. 2647] and he asked him about whether there was a name. If I am precluded from going into it, you are leaving the record open with something that is not explained here. I don't want to leave it that way.

Mr. Rosenthal: At the time that counsel for defense asked the privilege of this Court to permit them to direct attention of prospective talesmen in the jury box as to a

name or names, I recall distinctly Mr. Turkus objecting and the Court's sustaining and I think it is highly improper for the District Attorney after urging an objection to thereupon disregard it in the presence of an entire panel after eleven men are chosen and deliberately mention a name in this court-room.

Mr. Turkus: That is a stage play.

Mr. Rosenthal: I object to that statement. Please, I am addressing the Court.

Mr. Turkus: Please don't push.

Mr. Rosenthal: I don't do what you do.

Mr. Turkus: You just pushed me.

Mr. Rosenthal: And you are not telling the truth.

Mr. Turkus: You are deliberately stating a falsehood if you state you did not push me.

The Court: Please!

Mr. Turkus: There is a record here, Judge, I am concerned about.

The Court: I can hear only one at a time.

Mr. Turkus: Let him get through with it.

[fol. 2648] The Court: At this time I will hear Mr. Rosenthal. You mean that you were examining this talesman and asked him concerning names; that the Court sustained an objection?

Mr. Rosenthal: No, sir; I did not say that. I said when prospective talesmen were in the box, Mr. Barsbay at the time asked permission to direct the particular jurymen's attention to what name of a particular jury he had sat on. Mr. Turkus objected on the ground that it was bringing out a specific thing and the Court sustained it.

The Court: I see the point.

Mr. Turkus: And there was another juror, but I waived that when Mr. Rosenthal wanted to ask it.

The Court: Objection is sustained.

Mr. Turkus: Judge, may I point this out to you? Judge Talley brought out that there was a name mentioned in the other case that he heard here now and there is nothing on the record—

The Court: Pardon me. The point is quite clear. It involves the revelation of the name of the case and the Court must rule impartially as to both sides, so the objection is sustained.

Q. Let me ask you two more questions and we will be through with this. Mr. Rorke, do you owe your uncle anything?

A. No, sir.

Mr. Talley: I object to that question. I would not like to have that asked of myself.

Mr. Turkus: Please don't be so sensitive.

[fol. 2649] Q. If you are satisfied beyond a reasonable doubt that they are guilty, will you say it in your verdict?

Mr. Cuff: I object to that as already answered.

The Court: Sustained.

Q. If you are not satisfied of their guilt beyond a reasonable doubt, will you say it?

Mr. Cuff: I object to that for the same reason.

The Court: Sustained.

Mr. Turkus: Then that is all I want to ask.

Mr. Talley: We press the challenge.

The Court: I will have to overrule you, Judge.

Mr. Talley: We all except to your Honor's ruling in this instance.

The Foreman of the Jury: Your Honor, some of the jurors have asked for a five-minute recess.

The Court: We will take a fifteen-minute recess.

[fol. 2650] Do not discuss the case.

Let the defendants be remanded first.

(A fifteen-minute recess was thereupon taken.)

(5:00 P. M.)

TRIAL RESUMED

Mr. Talley: Counsel desires to confer with your Honor at the bench. May we do so?

The Court: Yes.

(All counsel and Mr. Turkus appear before the bench, and the following takes place, without the hearing of the panel):

Mr. Talley: Counsel are now presented with this condition: that they have only one more of the challenges left.

If the peremptory challenge has got to be exercised, if it is against the eleventh juror, that will leave us without a challenge for the twelfth juror. I did not feel we would be justified in putting upon the record, in our challenge to Mr. Rorke, now sitting in the twelfth seat, the fact that the name he stated in his examination that he had heard mentioned in the Maione trial, in which he was called as a juror and challenged peremptorily by one of the present counsel in this case, was the name of one of the three defendants in this case. We wish to put upon the record now that the [fol. 2651] basis of our challenge was not only his relationship to the Police Inspector in the New York City Police Department, but also that he had sat in a court-room as a prospective juror in a case in which was mentioned to him during the course of his examination, and I assume the examination of other talesman, the name of the defendant Capone, who is a defendant in this case.

I want to call your Honor's attention to the fact that many, if not all, of our peremptory challenges were compulsory, so to speak, after your Honor had denied our challenges for cause or implied bias, or on whatever ground the challenges were made; so we are now faced with the situation of having exhausted or of being about to exhaust our peremptory challenges and being unable to serve a peremptory challenge against Talesman Rorke, who was examined a few minutes ago.

The Court: Is that all?

Mr. Rosenthal: One thing I want to add is some of the voluntary peremptory challenges that were taken and caused us to use up our peremptory challenges I consider were involuntary, so that your Honor is faced with a situation under authority of *The People vs. McQuade* and *People vs. Greco*. *The People vs. McQuade* is in 110 N. Y., at page 290 or thereabouts. For that reason exception was taken [fol. 2652] to the exhausting of peremptory challenges by us—necessary to be taken by us.

Mr. Barshay: Counsel for the defendant Buchalter joins in exactly what Judge Talley and Mr. Rosenthal have said as if they said it separately and independently.

The Court: You have exercised, I understand, twenty-nine peremptory challenges.

Mr. Rosenthal: That is right.

The Court: And possibly several were following the Court's overruling challenges for cause. The rest were

without any trial of a challenge for cause, but that is neither here nor there.

The Court is not interested in these cases for the reason that the Court has done its best to be fair in the trial of these challenges and believes its decisions to be correct and that they will stand up on appeal.

The matter that Judge Talley mentioned in relation to the name of one of the defendants in this case was, of course, included in the Court's ruling upon the last challenge. It was one point on which the Court had considerable difficulty in coming to a decision, and believes it to be accurate. I do not see what difference it makes. The Court viewed the challenge as being for all purposes of bias, consequently considered the point of alleged bias that developed. I think, now, counsel having had their say, we should let it stand.

[fol. 2653] Mr. Rosenthal: May I make this observation—

The Court: No more argument after the decision.

Mr. Rosenthal: I just wanted to make mention of the fact that—

The Court: You cannot build up a record by comments after the Court has made a decision.

Defense Counsel: Exception to all defendants.

The Court: Resume examination of talesmen.

Mr. Talley: There are no further questions as to Mr. Andrews (talesman).

The Court: Any further questions by any other counsel for the defense?

Mr. Talley: No further questions with respect to Mr. Andrews for the defense.

[fol. 2654] The Court: You may resume questioning as to Mr. Rorke.

Mr. Rosenthal: May I note an exception on the record.

John J. Rorke (examination continued):

By Mr. Barshay:

Q. Mr. Rorke, we are serving as the legal machinery, each counsel contending what he claims is his legal right. I take it that will not influence your judgment against our defendant?

A. No, sir.

Q. The fact, on legal motions, on legal argument, the Court has ruled in the manner in which it did, you will not hold that against us or resent it in any way?

A. No, sir.

Q. I take it it will be fair enough to say that every defendant who comes to trial in this court is entitled to be represented by counsel, who makes the best fight they know how for their client.

A. Yes, sir.

Q. The fact that at some time or other some lawyer excused you in another trial has nothing to do with this case—the fact that when a motion was made with respect to this case, you had nothing to do with that—as though it never happened—you will consider the evidence in this case just as fairly and equitably and squarely as you know how?

A. Yes, sir.

Q. At no time and no place will you allow it to prejudice [fol. 2655] you in any way?

A. No, sir.

Q. Pardon me for repeating it, because this is my cause. Do you belong to any organization of any nature?

A. No.

Q. Do you intend to participate at all in the forthcoming election?

A. No, sir.

Q. Do you know anyone at all in Judge O'Dwyer's office?

A. You mean officials?

Q. Yes.

A. No, sir.

Q. Do you know anyone on the clerical staff?

A. I did know one there—whether he is still there I do not know.

Q. May I know his name?

A. O'Sullivan.

Q. I don't know whether he will be in this case, but if he is, will it influence you in any way whatever?

A. No, sir.

Q. Because he merely reported what transpires, if he did report.

A. I understand.

Q. Do you know Mr. Turkus or Mr. Klein?

A. No, sir.

Q. Mr. Klein is not here now, but he will be here during the course of the trial—do you know him?

A. No, sir.

Q. He may have appeared in the matter in which you were questioned before; do you recall that—a very short fellow.

A. No, sir.

Q. I take it that all the argument you have heard while sitting here, between counsel and Mr. Turkus, will have nothing to do with the case? Sometimes it is of a legal nature—sometimes we get a little personal—but that does [fol. 2656] not matter at all when it comes to consider the guilt or innocence of the defendant.

A. I know that.

Q. Just as well as I was on this side of the table and he was on the other, and he fought just as hard for his case then as he does now.

A. Yes, sir.

Q. Speaking for Mr. Buchalter, you have heard, and I must repeat, that he is now incarcerated for a long time because of some previous crime. Some people may have a prejudice against people in that position. They may not take his word. Would you be prejudiced against him by virtue of that?

A. No, sir.

Q. The issue here is the only one which you shall decide?

A. Yes, sir.

Q. Whatever happens, happens?

A. Yes, sir.

Q. Do you believe in according to him as well as to the other defendants what the law gives him as a matter of substantial right—the presumption of innocence?

A. Yes, sir.

Q. Do you believe the indictment is, by its language, simply an accusation against Mr. Buchalter of the commission of a crime, and has no weight whatever?

A. I do.

Q. And when he said, "Not guilty," he put every charge against him and every bit of evidence that is to be presented against him, in issue for you to decide?

A. Yes, sir.

Q. And by his plea of not guilty he has said, "I am not an accomplice of anyone," do you understand?

A. Yes, sir.

[fol. 2657] Q. The mere fact that a man comes here and claims he is an accomplice of Buchalter does not make it so unless by evidence you are convinced of that fact?

A. Yes, sir.

Q. And that person may be telling the truth, as has been well said by other counsel, about his own participation in it, but somewhere, for some reason, he has a motive in saying he is an accomplice of Buchalter. You will be the one to find out whether there is a reason—whether there is a motive for such testimony.

A. Yes, sir.

Q. And you may come to the conclusion, if you see fit after judging him or liking him or disliking him, whatever you may think, that he may be saying the truth concerning himself but absolutely falsifying about Mr. Buchalter.

A. Yes, sir.

Q. And among other things, you may take into consideration his background, his hope of regard, the treatment he has been accorded, the fact that he did at one time say he was not an accomplice, and the fact he never even saw Mr. Buchalter, will you take those things into consideration?

A. Yes, sir.

Q. Even then, if the Court shall tell you to view that testimony with a great deal of care and suspicion—the law says that, will you do that?

A. Yes, sir.

Q. Then the law demands of you that you must go further. Should you even believe the testimony of the accomplice that is not enough. Corroborate that man's testimony, says the law to the District Attorney, by independent evidence, independent of him, which tends to connect Mr. Buchalter with the commission of this crime. Will you do that?

A. Yes, sir.

Q. Otherwise you will acquit him?

A. Yes, sir.

Q. Then will you look to the source from which comes the so-called corroborating testimony?

A. Yes, sir.

Q. If it comes from a polluted or criminal source, from criminals who have a motive, you will consider that?

A. Yes, sir.

Q. If you disbelieve it and out of that disbelief you find a reason for doubt, you will say so by your verdict?

A. Yes, sir.

Q. If you disbelieve it and out of that disbelief you find that there is a reasonable doubt, the District Attorney has failed to prove his case beyond a reasonable doubt, and you will say so by your verdict?

A. Yes, sir.

Q. And of course that will be "Not guilty"?

A. Yes, sir.

Q. Some counsel have indicated quite clearly that they may offer testimony on behalf of their defendants, no matter what that testimony may be. We may offer testimony on behalf of Buchalter or may not. But if the Court shall tell you we need not, either by him or through witnesses, you must not draw any unfavorable inference by virtue thereof. Will you follow that law?

A. Yes, sir.

[fol. 2659] Q. You will not expect him to explain any single accusation against him?

A. No, sir.

Q. Because, without a single word forthcoming from the defendant, the duty always remains with the prosecution. Do you agree with that?

A. Yes, sir.

Q. So Mr. Buchalter, if you are chosen as a juror, can we rely upon you for the preservation of every right that the law gives him?

A. Yes, sir.

Q. You to be the sole and exclusive judge of every fact in the case and you to take the law from his Honor at the proper time?

A. Yes, sir.

Q. Applying both together, you not yielding to anyone with respect to the fact, and taking the law from his Honor, then, if there is a reasonable doubt, will you have the courage to give it to Mr. Buchalter?

A. Yes, sir.

Q. No doubt about it?

A. No, sir.

Mr. Rosenthal: I have no questions and rest on the record.

Mr. Turkus: Mr. Andrews is satisfactory to The People of the State, and Mr. Rorke is satisfactory to The People of the State.

Mr. Talley: Mr. Andrews is challenged peremptorily [fol 2660] by the defense.

Defense Counsel: All join.

(Mr. Rorke was then seated as Tentative Juror No. 11.)

Mr. Turkus: Your Honor, since we have only one more juror to get and two alternates, may I respectfully suggest we adjourn.

The Court: I would like to complete, if possible, the jury tonight and get them sworn; then we can accommodate counsel by having the alternates selected tomorrow.

Mr. Turkus: That would mean a night session?

The Court: No, it would not.

Mr. Turkus: I have only had a sandwich at one o'clock; I cannot eat more when I am working.

The Court: Call one more gentleman.

(VICTOR H. HEATLEY, of 183 Lafayette Avenue, Brooklyn, New York, No. 3081, a talesman, was then called to the jury box and examined as to his qualifications.)

Mr. Rosenthal: I am supposed to be in court at nine o'clock in the morning, and I must contact my office and have some substitute go there.

The Court: You had a half an hour and a fifteen-minute declared recess; you had plenty of time to contact your office.

Mr. Rosenthal: I cannot contact my office in the courtroom.

The Court: Please proceed.

[fol. 2661] By Mr. Turkus:

Q. Do you reside at 113 Lafayette Avenue?

A. Yes.

The Court: May I ask a few questions?

Mr. Turkus: Yes.

By the Court?

Q. Where is your place of business?

A. No. 5 Beekman Street, New York City.

Q. Is your business mostly in bonds?

A. No, sir; it is a personal business entirely. I have friends, corporations and lawyers; I get bonds for them.

Q. Is that your own business?

A. I am with W. T. Jones.

Q. How long have you been in that business?

A. Since 1924.

Q. How old are you?

A. Fifty-eight.

Q. Before that what line were you in?

A. The Federal Reserve Bank, United States Government.

Q. How long were you in the Federal Reserve Bank?

A. About two years.

Q. In what capacity?

A. I was with the clearing department, they cleared checks.

Q. Is that when Mr. George W. Davis was one of the governors?

A. No, sir, I think Mr. Kern was.

Q. There is a board of governors?

A. Yes, sir.

Q. Or trustees?

A. A board of governors, I think, Judge; I don't think they have trustees.

[fol. 2662] Q. The board of governors is right. You had experience then in investments?

A. Yes, sir.

Q. For lawyers who handled estates?

A. Yes, sir.

Q. Have you had any business experience besides that?

A. I was with the Government in the Shipping Board before they assigned it to the Department of Justice. That was in 1923. They had an embezzlement case and they could not get the evidence, so they put it into my office. That was in 1923.

Q. What position did you have in the Shipping Board?

A. I had charge of all the labor along shore, but the man who was there previously to me had embezzled about \$2,000.

Q. You mean you had charge of the workmen along shore?

A. Yes, sir, the men who take care of ships, and do all the heavy work.

Q. You mean you had direct charge of the stevedores?

A. Yes, sir.

Q. How long ago was that?

A. 1921, 1922, and '23.

Q. That is twenty years ago?

A. Yes, sir, about that.

Q. You did not, at that time, I assume, contact any names that have been mentioned here?

A. No, sir, I do not know any.

Q. 183 Lafayette Avenue is near Adelphi Street?

A. Yes, sir.

Q. Is that a private house?

A. Yes, sir.

Q. Are you married?

A. Yes, sir.

Q. Have you any children?

A. No, sir.

Q. Do you occupy the whole house?

A. Yes, sir.

[fol. 2663] By Mr. Turkus:

Q. Have you heretofore served as a juror?

A. I have been called in January, on the panel, but my name was not called.

Q. Was that in the Supreme Court?

A. Yes, that is correct.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Are you in sympathy with the law enforcement?

A. Yes, sir.

Q. Did you hear me speak to the other talesmen about possible contacts in the clothing and garment truckers and the Brownsville and East New York area?

A. I don't know any of them.

Q. Do you know any of the nine lawyers representing the defendants?

A. No, sir.

Q. Do you know any member of the bar who specializes in criminal cases?

A. No, sir.

Q. Did you hear the discussion about accomplices?

A. Yes, sir.

Q. Do you feel the same as the jurors who have been accepted?

A. No, sir.

Q. A different feeling?

A. Yes, sir.

Q. You have an entirely different feeling?

A. Yes, sir.

Q. Maybe I don't understand you. Do you have any bias or prejudice?

A. Yes, sir, I have.

Q. Would you close your ears to the testimony?

A. That is different. You would have to prove it very [fol. 2664] conclusively.

Mr. Turkus: Challenge.

The Court: Try the challenge.

VICTOR H. HEATLEY, residing at 183 Lafayette Avenue, Brooklyn, New York, was duly sworn on the challenge.

By Mr. Turkus:

Q. Judge Taylor put certain questions to you as to ^{your} background and as to your present connection with stevedores.

A. Yes, sir.

Q. Would you make the same explanation under oath?

A. Yes, sir.

Q. Would you make the same response to me about accomplice testimony?

A. Yes, sir.

Mr. Turkus: I press the challenge.

By the Court:

Q. Maybe I did not understand you. Did you say you had a prejudice in this case?

A. No, sir, on the type of the defendants.

Q. Have you a prejudice against the defendants?

A. Yes, sir, of that type—a particular type is the one that I am very much prejudiced against.

Q. Would that affect your decision in this case?

A. Yes, sir, I start off very much so.

Defense Counsel: No questions.
The Court: Challenge sustained.

[fol. 2665] JACK COHEN, No. 3063, residing at No. 23 East 91st Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Are you related to Assistant District Attorney Cohen?

A. No, sir.

Q. You live in Brownsville?

A. East Flatbush.

Q. You are practically in Brownsville?

A. Yes, sir.

Q. That street begins at Utica?

A. It is right off the corner of Utica Avenue and East New York, right off that corner.

Q. How many years have you lived on the fringe of Brownsville?

A. Two years.

Q. Prior to that where did you live?

A. 675 Empire Boulevard.

Q. What district is that?

A. That is Crown Heights.

Q. You are listed as being in the coal business.

A. Yes, sir.

Q. For yourself?

A. Yes, sir.

Q. Where do you maintain your office?

A. Varick Avenue, in Brooklyn.

Q. Do you make coal deliveries throughout Brooklyn?

A. Yes, sir.

Q. Among people in Brownsville?

A. Yes, sir.

Q. Are the names Maione, Abbandando, Goldstein, Strauss, familiar names to you?

A. I read about them in the newspaper.

[fol. 2666] By the Court:

Q. Is that coal business a bushel business or tonnage?

A. Delivered by the ton.

Q. What is the name of the concern?

A. Harbor Coal Company.

Q. Where is that?

A. 157 Varick Avenue, Brooklyn, Newtown Creek.

By Mr. Turkus:

Q. Your trucks, in pursuance of your business, go into Brownsville and East New York?

A. Yes, sir.

Q. You have read about the names I mentioned, in the newspapers?

A. Yes, sir.

Q. Have you heard discussions about them in Brownsville or the East New York area?

A. No, sir.

Q. Having lived in that neighborhood, did you follow Judge O'Dwyer's investigation with any degree of particular interest?

A. No, sir.

Q. Now, Mr. Cohen, you have lived on the fringe of that neighborhood and have gone in the district on business; have you heard the names of the defendants in this case?

A. Not through business, through the newspapers I heard the names.

Q. Have you heard the other names, Goldstein, Strauss, Pittsburgh Phil?

A. No, sir, only through the newspapers.

Q. You never heard any discussion?

A. No, sir.

Q. Have you any bias against the defendants?

A. No.

[fol. 2667] Mr. Turkus: Challenge peremptorily.

HARRY L. YAKEL, No. 3092, was examined as to his qualifications to serve as a juror.

Mr. Barshay: May I again ask for a recess? This is the last juror to be chosen, and the strain will be greatest upon us in view of the situation that develops.

The Court: Proceed.

By Mr. Turkus:

Q. Yakel—is that a correct pronounciation of that name?

A. Yes, sir.

Q. You live on Albany Avenue?

A. Yes, sir.

Q. What do they call that district?

A. Vandever Park section.

Q. You are an architect by profession?

A. Yes, sir.

Q. Have you been an architect for years?

A. I obtained my registration in 1923.

Q. I take it since you have been engaged in business you have been an architect?

A. Yes, sir.

By the Court:

Q. You are between what streets?

A. Avenue I and Avenue H.

Q. That is right by the Long Island Railroad cut?

A. The cut runs through at Avenue H.

Q. You are south of the cut?

A. Yes, sir.

By Mr. Turkus:

[fol. 2668] Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Have you sat in any criminal case where there has been accomplice testimony given?

A. No, sir.

Q. The testimony of one defendant against the other?

A. Not in an accomplice case.

Q. Do you find any fault with the District Attorney, Judge O'Dwyer, or with the prosecution of an indictment wherein the testimony of an accomplice is received and used against the other confederates in a crime, or alleged to have committed a crime?

A. Due to my association with the Police Department.

Q. You say you have some association with members of the Police Department?

A. Yes, sir, the sergeant in the Brownsville station—I think he was there two years ago—I have not seen him in six months now.

Q. Did he tell you anything about this case?

A. At one time, along about last fall, I got a call to Flushing Avenue and he told me something about—

Mr. Rosenthal: I object to his going into any details of a conversation.

The Court: Yes, objection sustained.

Mr. Rosenthal: I challenge him for cause.

Mr. Turkus: No objection, of course.

The Court: Try the challenge.

[fol. 2669] HARRY L. YAKEL, residing at 1754 Albany Avenue, Brooklyn, New York, was sworn on the challenge.

By Mr. Rosenthal:

Q. You are now under oath.

A. Yes, sir.

Q. You made certain answers in regard to your personal acquaintanceship with a sergeant in the Police Department in Brownsville and a certain conversation which would prejudice the defendants in this case; is that right?

A. It would.

Q. And it goes to the question of their guilt or innocence on this charge, is that correct—the prejudice which exists in your mind?

A. To an extent.

Q. That is true?

A. Yes, sir.

Mr. Turkus: No questions.

The Court: Challenge sustained.

HARRY WEISBERG, No. 3119, called as a talesman, was examined as to his qualifications.

By the Court:

Q. You live around Avenue J?

A. Between L and M, East 21st Street.

Q. What is your business?

A. Banking.

Q. What bank?

A. Kuhn, Loeb & Company.

Q. How long have you been with them?

A. Thirty-six years.

Mr. Rosenthal: If your Honor please, this is a friend of mine. He was excused on a previous trial in which I was [fol. 2670] counsel, and at other times by this very Court. He would be very embarrassed if he had to sit.

The Court: Don't you realize the difficulty the Court would be in if it violated its determination not to allow more by consent.

Mr. Rosenthal: This is not consent. Mr. Turkus can ask him one question and he will tell him that he would be embarrassed if he sat on a case in which I am the attorney. He said it before. I withdraw the statement to the Court.

The Court: Personalities do not count. In rural districts lawyers know every juryman and every juryman knows every lawyer. It makes no difference. Go ahead.

Mr. Turkus: Judge, I am exhausted. I cannot go on any more. I cannot talk any more. I am tired out. I can't stand it any more.

The Court: You have a complex.

Mr. Turkus: All of us feel the same way, your Honor. This has gone on for weeks.

The Court: The Court is working as hard as counsel. The Court, I am sure counsel will agree, asks altogether too many questions. That, of course, makes the Court tired. Now, in addition to that, the Court has to be on the alert as to every question and answer, so as not to slip up on a ruling. The Court is not tired now.

Mr. Rosenthal: The Court is younger than counsel. I [fol. 2671] have been in the court-house since nine o'clock this morning.

The Court: I ask you to reconsider, and I will thank you very much if you do it.

Mr. Turkus: All right.

By Mr. Turkus:

Q. Mr. Rosenthal said you were a prospective juror in another case where he was counsel.

A. I don't think so.

By the Court:

Q. Would the fact that you know Mr. Rosenthal affect your decision?

A. It might, your honor.

Q. Would you be able to lay it aside and decide the case on the merits?

A. Possibly. There is one more angle. I am a member of the men's club, the 8th Avenue Temple, your Honor asked some jurors about that.

Q. Who spoke there?

A. Mr. Turkus.

Q. What was that about?

A. I was treasurer of the men's club at the time.

Q. Was that about Judge O'Dwyer?

A. No, sir.

Q. Was it anything about this case?

A. Yes, sir.

The Court: All right, challenge for implied bias. Try the challenge.

HARRY WEISBERG, residing at 1348 East 21st, Brooklyn, New York, sworn on the challenge.

By Mr. Turkus:

Q. When the Court asked you about the embarrassment [fol. 2672] of service, you replied you had some thought in your mind, and then you volunteered that you heard a discussion at the 8th Avenue Temple, which I gave at a time when you were present.

A. Yes, sir.

Q. That was a lecture concerning the apprehension of criminals and their prosecution?

A. Yes, sir.

Q. Do you feel as a result of certain matters you heard in that speech that you have a bias against the defendants which would preclude you from being fair?

A. It is quite likely it would.

The Court: As long as there is no question about counsel—

Mr. Rosenthal: I just want to ask him one question for the record.

By Mr. Resenthal:

Q. The bias does not extend to me?

A. No.

The Court: I will sustain the challenge.

BENJAMIN R. CORNING, No. 3062, a talesman, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Do you live in Bay Ridge?

A. Yes, sir.

Q. You are an engineer?

A. Yes, sir.

Q. I take it you have some background by way of a college degree?

A. Columbia.

[fol. 2673] Q. How old are you?

A. Thirty-seven.

The Court:

Q. Who are you employed by?

A. New York Telephone Company.

By the Court:

Q. How long have you been employed by the Telephone Company?

A. Twenty-one years.

Q. That has been your life occupation?

A. Yes.

Q. You live in the Fort Hamilton Section. Is that a house or an apartment?

A. That is a two-family house.

Q. Are you married?

A. Yes, sir.

Q. Any children?

A. No, sir.

Q. Are you under any embarrassment in serving here on account of your wife being alone?

A. Well, I don't like to leave her alone, naturally.

Q. You have in-laws?

A. I have a brother-in-law.

By Mr. Turkus:

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Are you in sympathy with law enforcement?

A. Yes, sir.

Q. Have you ever sat as a juror in a criminal case?

A. Yes, sir.

Q. Did the case come to a conclusion, and by that I mean did the Judge charge the jury on the law?

A. I think he did.

Q. Were any of the lawyers in that case in this case now?

A. No, sir.

Q. Will you take the law exclusively from the trial judge [fol. 2674] in this case?

A. Yes, sir. I recall about six months ago, by Judge Leibowitz, Judge Healy was counsel.

Q. You were called as a juror in a part that Judge Leibowitz presided over, and Judge Healy was one of defense counsel?

A. Yes, sir, I was picked as No. 1 and challenged.

Q. I was not the prosecutor?

A. No, sir.

Q. It has been brought out by one of the lawyers for the defendant Buchalter that he has been convicted for other crimes and that he is now in jail serving a jail sentence. Would you relax or deviate from a proper result in this case because he is in jail for one of the crimes he has committed?

A. No, sir.

Q. It has also been brought out by one of the lawyers for the defendants that the defendants are here only to meet one charge. Do you understand that is all the District Attorney in law can do, establish guilt beyond a reasonable doubt on this charge and this charge alone?

A. Yes, sir.

Q. If I accepted you as a juror, would you endeavor to do justice in this case?

A. I will try, yes, sir.

By the Court:

Q. Has anything you heard in court caused a prejudice in your mind in relation to either side of the case?

A. No, sir.

By Mr. Turkus:

Q. In the case in which you sat as a juror, do you say that was years ago, when you actually sat as a juror?

A. Yes, sir, that was a murder case, Judge Brancato [fol. 2675] was the judge. Mr. Kleinman was the Assistant District Attorney.

Q. Do you know any of these nine lawyers in this case?

A. I saw Mr. Barshay in the court-room at that time, I think.

Q. Is your acquaintance with Mr. Barshay limited to the time when you, as a juror, saw him in the court representing The People?

A. Yes, sir.

Q. Is that the limit of your acquaintance with Mr. Kleinman?

A. Yes, sir.

Q. In a criminal case, in every criminal case, as you understand from your experience, the defendants have certain rights, and the Judge charges certain legal safeguards, the presumption of innocence, the doctrine of reasonable doubt, the burden of proof on the District Attorney, and other matters which the Judge will charge you on the law. Will you take every one of the Judge's instructions and apply them to the facts?

A. Yes, sir.

Q. And after you hear all the evidence in the case, if you have a reasonable doubt about their guilt, will you say so in your verdict?

A. Yes, sir.

Q. Have you any bias or prejudice against the prosecutor of the county, Judge O'Dwyer, or against the prosecution wherein a murder case is solved from the inside, by the acceptance of an accomplice's evidence?

A. No, sir.

Q. Will you apply all the rules and tests to an accomplice witness, to find out does he tell the truth, I don't mean about [fol. 2676] his own share in the commission of the murder, but the part which each defendant played?

A. Yes, sir.

Q. If accepted, will you devote your mental faculties to ascertaining whether the accomplice speaks the truth about the part that each defendant, as a group or combination, played in the commission of this murder?

Mr. Barshay: I object as to the form.

Mr. Turkus: Alleged murder.

The Court: Allowed as qualified.

Q. You understand, when I tell you a case is broken from the inside and I tell you the defendants played certain parts in the commission of a murder, that is not evidence? I am telling you that now in order to find out your state of mind, to see if there is any prejudice. Do you understand it is your job to find out whether or not the case is solved from the inside and whether or not these defendants did play the part that we charge in the indictment they played in the commission of this murder? You do not accept any statement of the prosecutor in lieu of testimony you hear in court?

A. No, sir.

Q. It may be you may not like the accomplice. I don't know what your reaction is. I am not sworn here; you are sworn, and all my personal belief about an accomplice is not what really concerns. We are concerned with, Does he speak the truth, not only about himself, but them.

A. Yes.

Q. If you find from the evidence that these three men [fol. 2677] are guilty of murder in the first degree, you will not acquit them because you do not like the accomplice, will you?

A. No, sir.

Mr. Barshay: I object to the form of the question.

By the Court:

Q. If the case is proven beyond a reasonable doubt, will you convict?

A. Yes, sir.

Q. If not proven beyond a reasonable doubt, will you acquit?

A. Yes, sir.

Q. Do you know of any reason why you cannot make a fair and impartial juror?

A. No, sir.

Q. And make an intelligent decision upon the evidence and the evidence alone?

A. No, sir.

Q. Is there any reason why you cannot or won't make a fair and impartial juror and try the case upon the evidence and the evidence alone?

A. No, sir.

By Mr. Talley:

Q. Have you read anything about this case or any of these defendants?

A. I have read the headlines.

Q. Did you read any of the articles the headlines of which you say you read?

A. I read an article in the *Telegram*.

Q. In any other paper?

A. I read the headlines, that is all.

Q. Did you read anything in the *Mirror*?

A. No, sir.

Q. Did you read the *Journal-American*, the life and career of Judge O'Dwyer?

A. No, sir.

[fol. 2678] Q. Have you talked to anybody about this case or about these defendants?

A. No, sir, I just had a little conversation that had no bearing on the case.

Q. Was it about this case?

A. I have mentioned it in conversation.

Q. Was it about these defendants or any of them?

A. Well, maybe I should elaborate a little bit. I go home at night, and certain people know I am on this panel—they found out—and they ask me certain things about it. I did not speak an awful lot about it.

Q. When were you served with your notice to appear in this case?

A. On Saturday at about four o'clock.

Q. You have had much time since then to talk about the case?

A. No, sir.

Q. Have you formed any impression about the guilt or innocence of these defendants as a result of the conversation, casual or otherwise, as a result of your reading?

A. No, sir.

Q. You haven't any impression about any of these defendants; is that right?

A. Yes, sir.

Q. The Court will charge you that the burden in a criminal trial rests upon The People to prove the guilt of the defendants and to prove it beyond a reasonable doubt; would you require that degree of proof before you would find a verdict of guilty?

A. I understand.

Q. If you have a reasonable doubt, the Court will charge [fol. 2679] you that guilt must be proven beyond a reasonable doubt—if you have a reasonable doubt as to the guilt of any of these three defendants, will you give these defendants the benefit of that doubt and acquit them?

A. Yes, sir.

Q. There isn't any question in your mind that you will do that under these circumstances?

A. No, sir.

Q. The law requiring that The People must prove the guilt of the defendants means, in another way, that the defendants are not called upon to prove their innocence, you understand?

A. Yes, sir.

Q. And they are not called upon to testify—to prove their innocence, or to rebut anything said by The People—you understand that is our law?

A. Yes, sir.

Q. And if it should happen, under advice of counsel or otherwise, that any of these defendants shall not take the stand, will you indulge in any unfavorable inference against them in case they do not take the stand?

A. No, sir.

Q. You realize that is one of their rights?

A. Yes, sir.

Q. It has been indicated here by the District Attorney that the evidence, or some of it, against these defendants will come out of the mouths of accomplices—that is, men who say they had a part in the commission of the killing, the subject of the indictment. The Court will charge you that your obligation, your duty, is to scrutinize the testimony of an accomplice, or one who says he is an accomplice, or [fol. 2680] one whom you find from the testimony and the facts, whether he denies it or not, is an accomplice. If

the Court charges you to scrutinize that kind of testimony with care and caution and suspicion, would you view their testimony in that regard?

A. Yes, sir.

Q. Now, the Court will charge you further that before you can convict upon the testimony of an accomplice, whether it be one or one hundred, that such testimony coming from the mouth of an accomplice, must be corroborated, supported, and backed up by some other evidence which is independent of the testimony of the accomplice. Before you convict upon testimony of such an accomplice, will you require that that further independent evidence will be produced by the District Attorney?

A. Yes, sir.

Q. Do you know of any reason why you cannot sit as a fair and impartial juror on the trial of this case?

A. No, sir.

Q. You haven't any prejudice or feeling against the defendants?

A. No, sir.

Q. The Court will charge you that they are presumed to be innocent until guilt is proven beyond a reasonable doubt, and you will give them that presumption, that legal right that every citizen has?

A. Yes, sir.

Q. The presumption of innocence you will give to them?

A. Yes, sir.

Q. You will not be afraid to bring in a verdict of Not [fol. 2681] Guilty with respect to these defendants if you are not satisfied beyond a reasonable doubt of their guilt?

A. That is right.

Q. Do you know Judge O'Dwyer?

A. No, sir.

Q. Are you contemplating taking any part in the campaign in which Judge O'Dwyer is a candidate?

A. No, sir.

Q. Are you a member of any organization, so far as you know, that is taking part in the campaign to elect Judge O'Dwyer?

A. No, sir.

Q. So you have no activity at present, or no concentrated activity with respect to this Mayoralty election?

A. That is right.

By the Court:

Q. You are not a member of the family of Erasmus Corning?

A. No, sir, mother and father were born in Nova Scotia.

Mr. Climenko: If your Honor please, may I respectfully request we recess at this time? May I state the reason for my request?

The Court: No, this is not a reviewable matter at all.

Mr. Climenko: May I merely state it is now twenty-five minutes to seven, but I had other reasons for making the exception, and I take an exception to your Honor's ruling that I may not state those reasons.

By Mr. Climenko:

Q. You started working for your company when you were [fol. 2682] sixteen?

A. Yes, sir.

Q. Now, do you belong to any club or association formed in connection with the company you work for?

A. No, sir—The Pioneers, that is, a man who has twenty-one years' service becomes a Pioneer.

Q. That is just seniority?

A. Yes, sir.

Q. That is not an association in a sense other than it brings men together?

A. Yes, sir, they have meetings, but I have not been with them yet.

Q. You are just qualified, you have not become intimate as yet?

A. That is right.

Q. You do not belong to any other social association connected with your corporate employer?

A. No, sir.

Q. Have you heard any lectures on crime in general?

A. No, sir, not to my knowledge.

Q. I don't mean necessarily in connection with your employment, but have you listened to lectures on crime?

A. No.

Q. Are you acquainted with any member of the Police Department of the City of New York?

A. No.

Q. You do not have any members of that particular group in your friendship?

A. Only one, I bowled with him; I met him occasionally, bowling.

Q. May I know his name?

A. Carey.

Q. Do you know his rank?

A. No, sir.

Q. He is just a bowling acquaintance?

[fol. 2683] Q. You bowled a game with him, I understand?

A. I have known him for about six months.

Q. What I am interested in knowing is whether or not, in connection with the acquaintanceship with Officer Carey you have discussed matters coming before him in his capacity as a police officer.

A. No, sir.

Q. What is his rank, by the way?

A. I could not say what his rank is; I know he is a member of the Police Department.

Q. Have you and he ever talked about this case?

A. No, sir, it is six months maybe; I have not seen him for six months.

By the Court:

Q. Have you and he ever talked about any criminal case?

A. No, sir, strictly bowling.

By Mr. Climenko:

Q. That has no bearing on your decision in this case?

A. No, sir.

Q. Judge Talley asked you if you read about this case, and I understood you to say you simply read the headlines.

A. Yes, sir.

Q. You did not read the contents of any article below the headlines?

A. Except the one in the *Telegram*, that was Tuesday of this week.

Q. You did not read the *Mirror* or the series of articles which it ran sometime between July and August of this year?

A. No, sir.

Q. You did not read the series of articles which appeared in the *Journal*?

A. No, sir.

[fol. 2684] Q. Have you discussed this case other than the discussion you told Judge Talley about, with those people who know you are on the panel?

A. No, sir.

Q. Have you ever heard discussions by other persons?

A. I heard them speak about it, yes, sir.

Q. Within a week or so?

A. Yes, sir.

Q. Were those discussions in which participants, through the discussions, voiced or expressed an opinion about anybody named in the indictment in this case?

A. Yes, sir.

Q. You have heard other people express opinions about one or more of the defendants in this case?

A. Yes, sir.

Q. Were those opinions expressed by persons who purported to have an opinion as to the guilt or innocence of the defendants, one or more of them, in this case?

A. Yes, sir.

Q. How late was the last of these discussions you ever heard?

A. About two nights ago.

Q. Will you tell me where this discussion took place?

A. In a candy store where I buy the paper on my way home, as I left here.

Q. Is that candy store near here?

A. Near where I live.

Q. In other words, is it a place you usually patronize, where you go to buy confections or newspapers?

A. Yes, sir.

Q. Do you know the participants in this discussion?

A. Yes, sir.

Q. Are they friends of yours?

A. Yes, sir.

[fol. 2685] Q. And they have been your intimate friends for some time?

A. I know one of them.

Q. He is a fellow whom you respect generally?

A. Yes, sir, I respect.

Q. I mean he is a fellow you respect.

A. I would not say that I respect him.

Q. You do not always believe friends on every subject—but this man is a friend of yours?

A. Yes, sir.

Q. A good enough friend of yours—

Mr. Turkus: (interrupting) I object. They have been going over this fishing trip for the third time.

The Court: For a man who is trying to save time there have been lots of questions.

By the Court:

Q. Was anything said in the candy store which would influence your opinion in the decision of this case?

A. No, sir; he expressed an opinion.

Q. Does that influence you?

A. No, sir.

Q. Did you pay any attention to him?

A. Not particularly, no, sir; I cannot say I did.

Q. Do you know the candy store man?

A. This man is not the candy store man.

Q. He is a customer?

A. Yes, sir.

Q. What was his business?

A. He works in the fur line; I think he models fur goods.
[fol. 2686] Q. Did he give you what appeared to be information that had any bearing on this case?

A. He claimed he knew certain things, I don't know just what they are.

Q. Did he go into details?

A. No, sir; he mentioned certain things.

Q. Did he apparently try to talk to you as a partisan for the prosecution?

A. I would not say that; I think he just spoke what he thought.

Q. Did you participate in the discussion?

A. No, sir, not to any length.

Q. Did you ask him for more?

A. No, sir.

Q. Are you able to lay all that aside?

A. I think so, yes.

Q. Do you know so—that you will lay it aside?

A. I can, yes, sir.

By Mr. Climenko:

Q. You understand I am not to pry into your personal affairs, you know I would not presume to ask you about the identity of your friends. I am a lawyer representing a defendant in this case; you know that?

A. Yes, sir.

Q. So that there isn't any possibility that you may be offended by the tone of any question I ask you?

A. Yes, sir.

Q. There is nothing personal about any of these questions I put to you. I am here under an obligation as a lawyer at this moment to ask you on these matters, which were I to ask you about outside of the court-room might sound differently? [fol. 2687]

A. Yes, sir.

Q. But because of the circumstances we are in at this moment and because of this obligation on me at this moment, you understand, these questions are not offensive?

A. Yes, sir.

Q. The gentleman you spoke to in the candy store you frequent, you understand I am not being offensive about it, but simply because I feel it is my duty to do it; now, the gentleman whom you met in the candy store you frequent expressed an opinion about a defendant in this case within the last two days?

A. Yes, sir.

Q. Now, did he know that you had a notice to appear here as a member of this panel?

A. Yes, sir.

Q. He had learned that a few days before this discussion took place, is that correct?

A. Yes, sir.

Q. Was that discussion you had with him two days ago the first conversation of a series on the subject?

A. That is the only time I had that talk.

By the Court:

Q. Did you tell him you did not want to listen to it?

A. I did not get that far, I don't think.

Q. Did it last any length of time?

A. No, sir. He expressed an opinion, and I did not go any further.

Q. Just a few words?

A. Just a little more than a few words.

Q. Then it was dropped?

[fol. 2688] A. Yes, sir, and I went on another conversation.

By Mr. Climenko:

Q. You volunteered that your friend had something to do with the fur business. What did he do, model fur coats?

A. Modeled fur coats.

By the Court:

Q. He was a workman?

A. Well, I suppose you would call him a fur dealer.

Q. I mean, was he the owner of the business?

A. No, sir, I cannot answer that question; I did not know him well enough for that.

By Mr. Climenko:

Q. You first talked to him two days ago?

A. Yes, sir.

Q. Did you talk to him on any prior occasion?

A. Not about this.

Q. When first did he know you had a notice to appear as a member of this panel?

A. It happened that I was out fishing with him on Saturday.

Q. Did you tell him you had a notice to appear as a member of this panel?

A. I did not know it myself until I got home.

By the Court:

Q. Let us get down to the point. You went fishing with the man. Did he do any talking with you along the lines of evidence in this case—we are entitled to get an answer.

A. No, sir, I did not know I was on the ticket.

[fol. 2689] Q. Whether you knew it or not, did he talk to you and plant seed of belief in your mind?

A. Well, that question was a leading question he asked me—

Q. Did you form any impression as to the guilt or innocence of the accused, from what he said?

A. No, sir.

By Mr. Climenko:

Q. Did he tell you anything about any of the defendants in this case?

A. Yes.

By the Court:

Q. Did he mention them by name?

A. Yes, sir.

Mr. Climenko: I challenge.

The Court: Try the challenge.

Benjamin R. Corning, residing at 138 Ninety-sixth Street, Brooklyn, New York, was sworn on the challenge.

By Mr. Climenko:

Q. Now that you are sworn, if I were to repeat the different questions which I put to you before you were under oath, would your answers be the same?

A. Yes, sir.

Mr. Turkus: No questions.

The Court: Challenge! sustained.

(William C. Link, a talesman, was called to the jury box.)

The Court: Gentlemen, you may go until tomorrow morning at ten o'clock. Please remember the previous admonition. Do not discuss the case nor let anyone talk to you about it. Keep your minds open. Particularly, in connection with my admonition, do not listen to the radio or any campaign speeches tonight. Defendants remanded.

All other talesmen excused until ten o'clock tomorrow morning.

(After the departure of talesmen and jurors, the Court made the following statement:)

The Court: The purpose of this is to simplify and complete the record in regard to the good faith of the Court in relation to the defendant who claims to be ill but who may be shamming.

A letter by the Court, delivered by messenger last night at the close of the court session, to the Tombs, 101 Centre

Street, City Prison, directed to Dr. Andrew J. Torre, acting chief, Medical Staff:

[fol. 2691] "Dear Sir:

"This confirms my oral request to you yesterday on the occasion of your visit at the County Court. I request that you endeavor forthwith to procure a modification of the Acting Commissioner's order of October 10, 1941, so as to permit Louis Capone on each occasion when leaving for the court to be supplied with sufficient medication to be used, in his discretion, for the day's possible needs. The order of the Acting Commissioner permitting no medication whatever to be carried is in my judgment too stringent, in view of the diagnosis. The Court cannot afford, in the light of the report, to take any chance on the defendant's dying, due to coronary attack, for want of medication.

"Yours truly,

"(Signed by the Court.)"

The Court noticed today, both this morning and this afternoon, that this particular defendant chews gum very actively and constantly, and every few seconds opens his mouth, apparently swallowing air. This may have some bearing on the attack.

Court adjourned.

(Whereupon an adjournment was taken to Friday, October 17, 1941, at 10:00 A. M.)

[fol. 2692]

Brooklyn, N. Y., October 17, 1941.

Trial Resumed

WILLIAM C. LINK, a talesman, examined as to his qualification as a juror.

By Mr. Turkus:

Q. Do you reside on Remsen Street?

A. Yes, sir.

Q. That is on Columbia Heights?

A. Yes, sir.

Q. You are listed as a radio producer?

A. Well, I was a radio producer—

Q. You look familiar to me; I think you were on one of the panels in one of the murder cases I prosecuted?

A. Yes, sir.

Q. Mr. Rosenthal was one of the lawyers in that case?

A. Yes, sir.

Q. Is my memory correct, did you write the scrip- for "The District Attorney?"

A. No, sir, I did not.

Q. Did you have something to do with that program?

A. No, sir, at times I have been called in consultation on various programs; that was one of the programs.

Q. What business are you in?

A. I am a radio announcer.

The Court:

Q. What station?

A. A free lance, your Honor; no particular station; all stations.

Q. Before you went in the radio business what was your profession?

A. I was director of a radio school of technique for the Federal Service; prior to that I was a radio announcer; and prior to that I was manager of the Packard Motor Car Company.

[fol. 2693] By the Court:

Q. On Atlantic Avenue?

A. No, sir, 63rd Street and Broadway, New York.

Q. What school was that?

A. The Federal Theatre Radio School of Technique; I was director of that school, teaching actors and actresses.

Q. That is a W. P. A. proposition?

A. That is what they say.

By Mr. Turkus:

Q. I think you got as far as the jury box in the last case, was that in 1940—September of 1940?

A. March, I think.

By the Court:

Q. When you say you were a director in the school I assume you have had theatrical training?

A. I trained various actors and actresses in technique.

Q. What experience have you had on the stage?

A. None whatever.

Q. You had theatrical training?

A. I had theatrical training in radio technique but nothing as to the stage.

By Mr. Turkus:

Q. While you were examined the last time did you hear certain names mentioned in that examination?

A. I heard some names mentioned in that case.

Q. Did you hear the name of Harry (Happy) Maione?

[fol. 2694] A. Yes, sir.

Q. And Frank (The Dasher) Abbandando?

A. Yes, sir.

Q. The name of Martin Bugsy Goldstein?

A. I do not recall that name.

Q. And Harry Pittsburgh Phil Strauss?

A. Yes, sir.

Q. And other names?

A. I can not recall all.

Q. Do you know whether you heard the name of any defendant in this case?

A. I don't recall, no, sir.

Q. Did you follow the case thereafter with any degree of curiosity?

A. Not to any great extent except I wanted to find out what became of the case on the last day of the trial.

Q. Is there anything that you have gained by virtue of having been in the court, or anything you read, which would form a prejudice in your mind?

A. None whatever.

Q. I take it that you have sat through all the examinations we have had of prospective talesmen here?

A. Yes, sir.

Q. Would you answers be substantially the same if I went through the questions I put to the other talesmen whom we have accepted?

A. Yes, sir.

Q. For example, going into accomplice testimony, you understand by now that part of the testimony in this case will emanate from accomplices. Was there any discussion we had the last time you were called as a juror?

A. I believe there was.

[fol. 2695] Q. Do you have any bias or prejudice, or any fault to find with the District Attorney of the County, Judge O'Dwyer, or with the prosecution, concerning the testimony of accomplices as used against the remaining defendants in the case?

A. No.

Q. Will you, if accepted in this case, devote your mental faculties to finding out does this accomplice speak the truth about other men who were in the commission of crimes with him?

A. Yes, sir.

Q. And do you understand, from our examination, there can not be a conviction upon the unsupported testimony of accomplices?

A. Yes, sir.

Q. For example, no matter how believable a story of the accomplice is, implicating or involving his confederates, the law says there must be other evidence in the case which tends to connect the defendant with the commission of the crime, will you follow the instruction of law, and with common sense and understanding apply it to this case?

A. Yes, sir.

Q. If the judge should charge you, in substance—I may not use the exact language he uses, but in substance, that it is not the burden of the District Attorney to corroborate every item of the accomplice's testimony but that supporting evidence, if believed by the jury, may be deemed sufficient when it tends to connect the defendant and each of them with the commission of the crime, will you follow the instructions of law and apply the same to the facts in this [fol. 2696] case?

A. Yes, sir.

Q. Do you understand it is not whether I dislike an accomplice or whether you dislike him, it is not our personal feeling about him, the test is does he speak the truth about his confederates and the part they played as a group or combination in the commission of the murder alleged in the indictment?

A. Yes, sir.

Q. For example, you will be told, in substance, that you shall weigh the testimony of an accomplice with care and caution, and view it with suspicion—and the other tests you shall apply—which is all done for the common sense

purpose of finding out does he tell the truth not only about himself but about them?

A. Yes, sir.

Q. So now you know what test to apply, motive test, the criminal records of defendant's associations, no matter what those are, those are the rules you use to say "Does he speak the truth about them in the part that each of them played in this group or combination that perpetrated this alleged crime?"

A. Yes.

Q. It has been stated by one of the lawyers for Buchalter, that his client is now presently serving a long jail term for the commission of other offences and convictions. Would the fact that he is paying a penalty for other offences sway you in your deliberations in this trial in the proper determination of this case?

A. No.

[fol. 2697] Q. Would you relax or deviate from a proper jury verdict in this case because he is in jail now?

A. I would not.

Q. Is there anything in this examination that as a prosecutor I should know as to your qualifications and ability to sit on this trial and render a verdict in consonance with justice?

A. I do not know of any.

Q. Is there anything that occurred in the examination of jurors in the case in which I was prosecutor and Mr. Rosen that was one of the defendant's lawyers that affects your ability to sit here impartially?

A. None whatever.

Q. In that case I believe you came as far as now—that is, you got in the box?

A. Yes.

Q. Were you excused by one side or the other?

A. Yes, sir.

Q. It was not a cause challenge, was it, that is for any disability on your part?

A. No, sir.

Q. Is there anything by way of your excuse there that would prejudice you one way or the other?

A. No, sir.

Q. Have you served as a juror in any criminal case in the past?

A. No.

Q. There is nothing mysterious about jury duty; you are called here to determine the question of guilt or innocence of men on trial?

A. Yes, sir.

Q. And to that you will apply the law that the judge gives you and the common sense you have gathered through [fol. 2698] your every day walks of life?

A. Yes, sir.

Q. Very frankly, if, when you hear all the evidence of the case, if, after you have heard everything that Judge O'Dwyer produces in this court, if then you entertain a reasonable doubt, you would give that benefit to the defendants?

A. Yes, sir.

Q. Would you give them everything that the law of the land says they should have, and what the law of the land is as to the defendants on trial, Judge Taylor will tell you, and no one else. He tells the law. Will you give them everything under the sun that they are entitled to have by way of constitutional and other safeguards in a court of justice?

A. Yes, sir.

Q. And after you give them everything the law demands they should have, and after you heard all the evidence, should you be convinced beyond a reasonable doubt that here there are three guilty men, three who participated and played a combination part with a group—a part in the killing of the victim named in this indictment—will you say so by your verdict?

A. Yes, sir.

Q. Will you say so without fear or hesitation?

A. Yes, sir.

Q. Is there anything about your background or the present manner in which you earn your livelihood that would make it embarrassing or impossible for you to pronounce such a verdict?

A. No, sir.

[fol. 2699] By the Court:

Q. What stations have you broadcasted on?

A. In New York?

Q. Yes.

A. WEEF, WJZ, WOR, WMCA.

Q. Practically all?

A. Yes, sir.

Q. You get your employment as a free lance from advertising?

A. Advertising agency, yes, sir.

Q. You are put on in order to make the announcement and refer to advertising matter?

A. Yes, sir.

By Mr. Turkus:

Q. When I addressed the omnibus question to you was there anything I should know, I had in mind the garment district, the clothing district, the clothing truckers union, officials of the amalgamated union, the Brownsville section, East New York, and the Brooklyn water front. I direct your attention to that, and I ask you is there anything which brings you in contact with them in any shape or form?

A. None whatever.

By Mr. Barshay:

Q. Do you know anyone at all in the District Attorney's office?

A. No, sir.

Q. Do you know anyone connected with the Police Department?

A. No, sir.

Q. Personally, were you ever the victim of any crime?

A. No, sir.

Q. Do you write scrip too?

A. No, sir, I do not.

Q. Do you really act as an announcer?

A. Years ago I was in the production field; I arranged programs.

[fol. 2700] Q. In any scrip you saw or heard, the experience you got from dealing with this case, of course, aided you in your work but with respect to this case you know nothing?

A. No, sir.

By the Court:

Q. How old a man are you?

A. Forty-one.

Q. Then before you went into the Federal you were giving instructions at school, and you had considerable experience?

A. Yes, sir.

Q. Can you tell us one of the lines you were identified with?

A. Well, my experience, before I went to the Federal Theater, was gained first at WNYC. I became program director.

Q. How long ago is that?

A. Mr. Bohnsack was there; you probably know him.

Q. He was there a great many years?

A. I was there just about a year before he retired.

Q. Mr. Bohnsack was then in it about thirty years?

A. I don't know how long; I knew him only two years.

Q. Before that what line were you in?

A. Before that I conducted a school for diction and stage.

Q. For how long?

A. Two years.

Q. And before that?

A. Before that, I was a salesman, manager of the Packard Motor Car Company, for about eight years.

Q. Before that?

A. Before that I was with the United States Line, on the S. S. Manhattan; the entertainment part.

Q. You ran the entertainment part?

A. Yes, sir.

[fol. 2701] Q. For how many years?

A. About a year.

Q. Before that?

A. Before that, I was not doing anything; the Packard Motor Car Company was my first job.

By Mr. Barshay:

Q. Did you read anything about this case?

A. Not very much, just the headlines.

Q. Did that leave you with any impression?

A. No, extraordinary impression.

By the Court:

Q. Pardon me, have you got your school at Carnegie Hall?

A. No, sir.

By Mr. Barshay:

Q. But whatever they were, were they in any respect unfavorable to the defendants?

A. Not unfavorable, no; no impression whatever in that regard of guilt.

Q. Then we start at scratch with you?

A. Yes, sir.

Q. Any experience you have had as a juror leaves you with no bias towards them whatever?

A. No, sir.

Q. Mr. Turkus said to prospective jurors and to you that you were to judge fairly the evidence presented in this court by Judge O'Dwyer. I take it, he being part of the whole—I don't know whether Judge O'Dwyer will personally present the evidence—but, assuming he does, would that add weight to the believability of the evidence with respect to you?.....

A. No, sir.

Q. You understand that they are lawyers just as we are; they present to you what they have to the best of their ability?

[fol. 2702] A. Yes, sir.

Q. And Judge O'Dwyer's presentation of the proof here is no personal guarantee as to its truth—Judge O'Dwyer's presentation of testimony is no guarantee as to its truth?

A. I understand.

Q. He does not underwrite the truth of anything, neither does Mr. Turkus.

A. That is right.

Mr. Turkus: That is an ambiguous way to put it—by placing a witness on the stand the District Attorney vouches for his credibility.

Mr. Barshay: That is a legal conclusion, but you do not personally guarantee the man is not telling the truth.

Mr. Turkus: We are not in the insurance business, if that is what you mean.

Q. In other words, if, subconsciously, there is an attempt to permit the weight of Judge O'Dwyer's integrity and reputation to be used by way of evidence, you will not allow it?

A. No, sir.

Q. He would not want you to—do you believe you can accord to the defendants the presumption of innocence?

A. Yes, sir.

Q. That is a substantial right which everyone is permitted in court?

A. Yes, sir.

Q. When the defendant says not guilty, they in effect, say "You, Mr. District Attorney, present here proof which [fol. 2703] we believe, not any kind of proof, but proof which we believe." And when a defendant pleads not guilty he puts in issue the indictment. The language says "we accuse". It has no force other than to start a trial. You understand that?

A. Yes, sir.

Q. And when Buchalter said "not guilty", he said "I am not an accomplice or anyone; I am not part of any combination; I am not part of any group; I deny the accusation," that denial has weight, you understand?

A. Yes, sir.

Q. The burden remains with the District Attorney to prove the accusation alleged?

A. Yes, sir.

Q. He need not prove a single thing—he need disprove not one accusation in this case, you understand?

A. Yes, sir.

Q. So that when the District Attorney comes to present his proof you will want to know who is the person or persons who gives such proof—why do they give it—who are they—what do they expect for giving it?

A. Yes, sir.

Q. Is that a fair question?

A. Yes, sir.

Q. The same as any business man applying for credit, or even if he applies for a job—you want to know who he is and what he is, and what is the background of the man?

A. Yes, sir.

Q. And the cleaner the background the better the chance of accepting his testimony?

A. Yes, sir.

Q. And if it is a rotten background the more carefully you will look at this man in accepting or rejecting his testimony?

A. Yes, sir.

[fol. 2704] Q. That is a fair standard?

A. Yes, sir.

Q. So if the court shall tell you that you, as a juror, in searching for the truth should look for light, and will want to know what kind of a man he is, and is he an accomplice, and if he is an accomplice you must use a different stand-

ard—you must look upon it with caution and care—will you do that?

A. Yes, sir.

Q. Because you can understand, by the very definition given of an accomplice, if in his testimony in this case he is receiving immunity, he is not going to be punished for the crime he has committed; therefore, when someone has a reason for it, you, as a juror, have the job to find that reason.

Mr. Turkus: Objected to.

The Court: Objection overruled.

A. Yes, sir.

Q. Of course, if you reject his testimony—assuming now that you believe him, you have got to say to yourself, “Is he telling the truth about himself”, and then, “Is he telling the truth about Buchalter?”

A. Yes.

Q. He may be about himself, I don't know, but with respect to that you shall listen to the testimony and if it comes out here under oath that at a time and place he said he was not an accomplice to anyone, will you consider that?

A. Yes, sir.

Q. Will you consider, too, the fact that if it comes out here that at no time did he see Buchalter, in deciding whether or not he now claims to be Buchalter's accomplice?

A. Yes, sir.

[fol. 2705] Q. And find out whether or not he has committed murder or other crimes or robberies, or how he lived?

A. Yes, sir.

Q. How he has been treated since his incarceration, where he lived and what he ate, whom he saw, where he went, what entertainment he received, you will want to find out whether those things motivated him to falsify to you?

A. Yes, sir.

Q. Because he raised his hand to tell the truth does not necessarily mean that he is telling the truth?

A. No, sir.

Q. That is why if you are chosen for a juror you are to determine—you will wait until the entire case is finished and not make up your mind with respect to it until the conclusion?

A. Yes, sir.

Q. Of course you know by now if the testimony of the accomplice, should you believe it, standing alone is not sufficient for you to convict, and you will acquit?

A. Yes, sir.

Q. Corroborating testimony must be absolutely independent of the accomplice's testimony, you understand that?

A. Yes, sir.

Q. Are you in accord with that?

A. Yes, sir.

Q. There may be corroboration that someone has been killed at a place mentioned in the indictment, but that does not connect the defendant with the commission of the crime, that is not corroboration, you understand?

Q. That may corroborate him as to the killing, but not as to the defendant Buchalter's connection with the killing—[fol. 2706] that is a vital problem for you to decide?

A. Yes, sir.

Q. So when we offer testimony, it is the good faith you want to know of the man who gives it, what is he, who is he, what is the background, what is the motive, what can he hope to gain by giving such testimony; is he telling the truth with respect to Buchalter?

A. Yes, sir.

Q. And if on all that there is a reasonable doubt as to the guilt or innocence of Buchalter, you must acquit, will you do that?

A. Yes, sir.

Q. And Buchalter will not have to explain anything to you?

A. Yes, sir.

Q. Of course if he chooses to take the stand you can judge according to the instructions of his Honor, you will follow that, but I must ask you that now. I have elicited that not to gain your sympathy but to find out whether you are prejudiced against a man who is in that position. You have a right to be if you want to.

A. I am not prejudiced.

Q. Mr. Turkus wisely said that has nothing to do with this case, nevertheless it may prejudice some people, but if you have any, that has no place in the jury room. You say you have no prejudice?

A. Yes, sir.

Q. If others take the stand and he does not take the stand, that still would not affect his guilt or innocence?

A. No, sir.

Q. If he chooses to remain off. So, before you find out whether he is part and parcel of the group combination you [fol. 2707] will have to see whether or not that is brought out from the evidence—not from anything anyone says from here but from there (indicating witness stand)?

A. Yes, sir.

Q. You shall hear again as you heard before that one accomplice cannot corroborate another nor one hundred cannot corroborate each other. If they are accomplices they have no greater force with respect to corroboration. You know that?

A. Yes, sir.

Q. Now, some man may come here and say that he is not an accomplice—I do not know what the evidence will be—but if the Court shall leave it to you to decide whether he is or is not, will you follow the standard outlined by his Honor in deciding whether he is or is not?

A. Yes, sir.

Q. On the other hand, if the Court tells you as a matter of law someone is an accomplice with respect to him, you have a rule to follow and you must accept him as an accomplice if the Court tells you he is?

A. Yes, sir.

Q. And you must then look for other evidence tending to corroborate him?

A. Yes, sir.

Q. Can Mr. Buchalter as an individual depend on you and entrust to you his keeping and preservation?

A. Yes, sir.

Q. Without any sympathy or bias or prejudice?

A. Yes, sir.

Q. I take it you will consider your oath on that?

A. Yes, sir.

By Mr. Cuff:

Q. You told Mr. Barshay that as a result of reading which [fol. 2708] you indulged in concerning the case here you did not form any extraordinary impression?

A. Yes, sir.

Q. I did not get what that impression was, I would like you to tell me whether you formed any impression or not?

A. When I said extraordinary impression, I meant my impression would be an ordinary impression.

Q. What I am trying to find out is whether you did form any impression respecting the case of the defendants?

A. No, sir.

Q. So when you said you did not form any extraordinary impression, you meant you did not form any impression?

A. Yes, sir, that is correct.

Q. What papers do you usually read?

A. The World Telegram and the Tribune.

Q. Do you read the Mirror?

A. No, sir.

Q. Now?

A. No, sir.

Q. Did you read articles in the World Telegram?

A. Not many of them but just the headlines and probably two or three lines below.

Q. As a result of those readings did you form any impression with respect to this case of the defendants?

A. None.

Q. And if you are selected as a juror, I assume you understand that you with the other eleven men who will make up the jury have the sole right to determine what the facts are and where the truth lies in the case?

A. Yes, sir.

Q. And if his Honor should instruct you, and I think he [fol. 2709] will, that each juror must make up his mind after considering the evidence under the rules of law that his Honor will give for your guidance as to what the facts are and then find accordingly, will you do that?

A. Yes, sir.

Q. If, after giving careful scrutiny to the evidence which you will be instructed to give, you reach the conclusion that there is a reasonable doubt in your mind, a doubt which is based upon evidence or lack of evidence, will you have any hesitancy in reflecting that doubt in your verdict of not guilty in so far as the defendant or defendants are concerned?

A. No, sir.

Q. Do you realize that if you are selected as a juror, under your oath you must determine and find according to the way you regard the facts?

A. That is right.

Q. Without fear or favor or prejudice or bias.

A. Yes, sir.

Q. And can you do that?

A. Yes, sir.

Q. You were asked if you had any hesitation under certain given circumstances of returning a verdict of guilty. I ask you if you would have any hesitancy, any fear, any reluctance, in returning a verdict of not guilty if you found, after careful consideration of the evidence and a discussion with your other jurors that the prosecution had failed to establish to your satisfaction beyond a reasonable doubt that the defendants are guilty?

A. No, sir.

Q. Assuming that you have a reasonable doubt and his Honor should instruct you that it is your duty to reflect [fol. 2710] that reasonable doubt by your vote in the verdict, would you, unless you were convinced by reasonable argument and careful consideration of the evidence, give up your determination by reason of the fact that there were several more men against you, or would you by reason of the lateness of the hour or the length of time give it up?

A. No, sir.

Q. You would stick to it so long as you were not convinced that you were in error?

A. Yes, sir.

Q. I have your assurance that you will do that?

A. Yes, sir.

Q. His Honor will instruct you that these defendants, any of them, have a perfect right to remain silent; that the presumption of innocence inures to their benefit and the prosecution must establish their guilt of this crime charged in this indictment beyond a reasonable doubt. Assuming they do not take the witness stand will you draw any unfavorable inference against them by reason of that fact?

A. No, sir.

Q. You will follow the Court's instructions?

A. Yes, sir.

Q. You will give to them the benefit of that presumption, that substantial right, presumption of innocence all through this trial, every minute of the time you are deliberating and until you twelve men agree the prosecution has sustained the burden beyond a reasonable doubt?

A. Yes, sir.

By Mr. Rosenthal:

Q. I have addressed you before when you were in the jury box in another case—have you had any actual jury service? [fol. 2711] A. None whatever.

Q. So that this is the first time, if you are accepted, that you shall have actually served on a jury?

A. Yes, sir.

Q. Now, you understand that just the same as I am an advocate for a cause, Mr. Turkus is an advocate at present for the State of New York—the District Attorney?

A. Yes, sir.

Q. Did you know him when he was a lawyer practicing criminal law?

Mr. Turkus: I object to that. Mr. Rosenthal seems to want to make a record that I do not want.

The Court: You should be proud of it. Objection overruled.

Q. Now, let us be serious, you understand that in the presentation of a criminal case it is never the duty of a defendant to explain anything?

A. Yes, sir.

Q. Now, the law, of course, you will have to take from the judge; will you do that?

A. Yes, sir.

Q. It may be that you may differ in your conception of what the law is, but whether you differ or do not differ your province is not to invade the judge's province, which is to tell you what the law in this case is?

A. Yes, sir.

Q. You feel you will be able to do that?

A. Yes, sir.

Q. Now, then, on the other hand, just as the judge is supreme on the law, you are supreme on the facts and your interpretation of the same, and what weight you will give to [fol. 2712] any fact?

A. Yes, sir.

Q. I might tell you when I sum up, if the case goes that far, what I think the facts are; and, in contradiction to what I may say, Mr. Turkus will get up and tell you an entirely different story about what he thinks. The judge of course will tell you he has no right to comment whatever on the

facts and has no opinion whatever. But irrespective of that, no matter what anybody may say, you are—and when I say “you”, I mean the entire jury—you are the ones who will determine what value you will give to testimony of any witness on the stand. Is that clear?

A. Yes, sir.

Q. And that you will do?

A. Yes, sir.

Q. Now, although you will be told that the law is that a defendant need never take the stand or need never offer any proof in order to establish his innocence, nevertheless, on behalf of the defendant whom I represent, together with my associate, it may be that I will offer it and that the defendant will take the stand, and in addition to the defendant taking the stand that witnesses will take the stand on his behalf. With that thought in mind and with that knowledge, do you feel that really because the defendant is charged with crime and offers himself as a witness that the truth from him has any less weight or value than the truth from any other source?

A. No, sir.

Q. Of course, you will, like with any other witness, in [fol. 2713] determining what weight you will give to the defendant's testimony, take into consideration that he is a defendant and has an interest at stake, but after weighing whatever interest that may be, and his actions and his demeanor, and whatever may transpire when he is on the stand, if you feel he is telling you the truth, then in your mind it is established that the truth from him has just as much weight as the truth from any other source. Am I right?

A. Yes, sir.

Q. Some of these questions might be repetitions because I do not know how many of the questions were asked when you were in the court room. Proof may be offered in this case of what is termed in law as an alibi. There is no mysterious meaning as to that word, either in law or outside of law. It means that a witness will take the stand who will adduce to the fact where the defendant was at the time this crime was said to have occurred. Now, if you are told by the Court that a reasonable doubt is a doubt that arises in your mind from any circumstance that develops in the case—it may arise by the offer of evidence of an alibi—if

that alibi evidence raises a doubt in your mind as to whether the defendant participated in the crime—am I clear so far?

A. Yes, sir.

Q. Will you follow the instructions?

A. Yes, sir.

Q. Now, you understand, sir, if that instruction is given you by the Court that it is not incumbent upon the defendant because he offers evidence to establish the fact to your [fol. 2714] satisfaction beyond a doubt, that the burden does not shift from that side of the table at any time, you understand?

A. Yes, sir.

Q. So in determining the question of witnesses who are called by the defense will you keep in mind the fact that when you are testing what weight you will give to their testimony that all that is required upon the part of the defendant is not to prove that he was somewhere else but to prove sufficiently to your mind which will raise a reasonable doubt where, in the absence of such proof, maybe a reasonable doubt would not arise. Is that clear?

A. Yes, sir.

Q. You would have no difficulty in following the judge's instruction, if it was given by the Court?

A. No, sir.

Q. The mere fact that I have examined you before in some other case has no weight of any character?

A. No, sir.

Q. It may appear to be silly, but sometimes jurymen get the impression one way or another—but I think you were excused by the People and another gentleman was excused by the defendant—were you excused by the People?

A. Yes, sir.

Q. I meant whether you were excused by the People or by the defendant—Mr. Turkus and myself are not on trial—we are presenting the evidence, one on behalf of the People, that which has been given to him by witnesses whom he will produce, and me on behalf of the defendant on what he has told me and what evidence I have to produce.

A. Yes, sir.

[fol. 2715] Q. And our entity should not enter into the mind of any juror?

A. Yes, sir.

By the Court:

Q. When you were with WNYC, I take it you were employed by the City and not by advertisers?

A. By the City.

Q. Did you go out the same time as Mr. Bohnsack?

A. I went out a few months before he did.

C. Well now, have you any prejudice against the present City Administration?

A. None whatever.

Q. Nothing that would make you conduct yourself in favor of Judge O'Dwyer in this case?

A. No, sir, my mind is absolutely free.

By Mr. Rosenthal:

Q. I was just going to ask a question whether or not you have any intention of actively participating in the forthcoming political campaign?

A. No, sir.

Q. No broadcasting?

A. No, sir.

The Court:

Q. You have never broadcasted on the crime cases?

A. No, sir.

By Mr. Rosenthal:

Q. So I can abbreviate this, were you in court when the question was discussed with the other jurymen about the fact that no man can be convicted on the uncorroborated testimony of an accomplice?

A. Yes, sir.

Q. When the explanation was made as to the fact that [fol. 2716] even though a man may go on the stand and say I am an accomplice, he may be telling the truth concerning himself, but that is not the issue you have to decide. The issue is whether he is telling the truth about the defendant?

A. Yes, sir.

Q. Now, in taking into consideration not only the testimony of the so-called accomplice but any witness who may be called, whether it be for the defense or for the prosecution, will you scrutinize his testimony to such an extent that

you yourself will first formulate in your own mind whether or not he has a motive for testifying falsely in this court about the defendant?

A. I will.

Q. Now, if that would not be sufficient, once having established, if you do so establish, the fact that he has, will you then scrutinize sufficiently to ascertain whether in your opinion that motive is of such a character as would lead him to falsify?

A. Yes, sir.

Q. Now then, to go further than that, if you determine after those two premise that motive is of such a character as would lead him to falsity, so you would be unable to place credence on his testimony, will you, in determining what weight, if any, you will give his testimony, take these facts into consideration?

A. Yes, sir.

Q. Now, in considering not only that, you understand you also have a right to consider whether any particular individual called to the stand has been previously on the stand [fol. 2717] under oath and questioned, and committed deliberate perjury in respect to certain matters, or falsified under oath?

A. Yes, sir.

Q. In a court of similar jurisdiction to this, in determining what weight you will give this testimony?

A. Yes, sir.

Q. In other words, if you found a man has lied, putting it bluntly, under oath, under similar circumstances, to what he has testified to now under oath, you would consider that carefully?

A. Yes, sir.

Q. Merely because the District Attorney may get up and tell you that the man is not an accomplice, or merely because the Court does not charge you as a matter of law that the man is not an accomplice—you see that is how I am in difficulty as to whether you heard these things discussed—that does not preclude you, if the Judge tells you under certain circumstances you may. So that there may come a time when the judge will tell you, "I charge you, Mr. Juryman," or "Gentlemen of the jury, this man is an accomplice as a matter of law," if he charges you that way you will definitely view his testimony as an accomplice.

Now then, there may come a time when the judge may say to you, "Gentlemen of the jury, there is a question here that is left to you to determine as to whether or not this man is an accomplice." In other words, it is a disputed question, "so I leave it to you to determine." Then it will be the province of the jury to go into the jury room and before going over the testimony of this man and determining what [fol. 2718] weight they will give to it, determine to themselves whether under all the circumstances he is or is not an accomplice?

A. Yes, sir.

Q. The judge will probably charge you that once you have determined whether by virtue of the fact he has said the man is an accomplice as a matter of law or you find him an accomplice as a matter of fact, once you determine that fact that he is an accomplice, then, whether believed or not, no man can be convicted on his testimony or their testimony unless there is other independent evidence tending to connect the defendant?

A. Yes, sir.

Q. Never having sat on a jury before, that is a juror sitting in a jury room, do you understand that your duty as a juror is to view the evidence as you see it, as your mind reasons it?

A. Yes, sir.

Q. But that does not mean that after once having come to a determination in your mind that you should foreclose other people from discussing that and their reasons?

A. That is right.

Q. However, your duty as a juror is that after listening attentively and trying to have your ideas agree with others, argument pro and con, discussing reasons why you have come to determination and listening to reasons which they make, if after all of that discussion you have not been convinced that the foundation of your reasoning is wrong, it is your absolute duty to retain that opinion?

A. Yes, sir.

[fol. 2719] Q. If perchance such a circumstance does arise, have you the fortitude to retain your opinion irrespective of your inexperience in a jury room, irrespective of the lateness of the hour, business, numbers against you or any other outside extraneous cause, have you that fortitude?

A. Yes, sir.

By the Court:

Q. Do you live at 36 Remsen Street?

A. Yes, sir.

Q. That is between Montague Terrace and Hicks?

A. Yes, sir.

Q. Now some of those houses are still private dwellings?

A. Quite a few.

Q. Others have been made into apartments?

A. Yes, sir.

Q. Others are rooming or boarding houses?

A. Yes, sir.

Q. Do you live alone?

A. No, sir, I live with my wife. We live in a renovated house which was a private house, turned into an eight unit apartment.

Q. You occupy one of the apartments in one of the houses that have been reconstructed?

A. Yes, sir.

Q. There have been no home discussions about this case?

A. None whatever.

Q. Of course you have entered into boarding house table discussions?

A. I never lived in a boarding house.

Q. I asked you that because some of those are boarding houses?

A. I realize that.

Q. Where such topics are discussed at the table?

A. Yes.

[fol. 2720] By Mr. Rosenthal:

Q. Of course it is ridiculous to attempt to say this case has not had some publicity—you have read headlines?

A. Yes, sir.

Q. Now, do you understand these defendants—I am not referring to that purposely—but these defendants are not being tried because Judge O'Dwyer is trying to become Mayor—that is not the issue. Have you the power—and I only ask you this question because of what the District Attorney has said—have you the power not to consider whatever publicity may have been given to this case, if when you raise your hand and take an oath to act as a conscientious juror you are unable in your own mind to say that the People have established these defendants or defendant

whom I represent or all of them—to come in here without any fear of hesitation, without any worry, without any criticism that someone might try to make light of your verdict —and say “Not guilty,” if the defendant has not been proven guilty beyond a reasonable doubt?

Mr. Turkus: I object, that is summation.

The Court: Objection overruled.

A. I have.

By Mr. Turkus:

Q. Mr. Rosenthal has seen fit to bring out that it was the prosecutor who excused you in the last case.

Mr. Rosenthal: I object to that. Mr. Turkus brought out from the other man who excused them, so what is the [fol. 2721] difference?

The Court: Why argue about it?

Q. At that time I believe you were identified with a program of some sort?

A. Yes.

Q. Do you understand that that may have been a question of propriety at that time?

A. Yes, sir.

Q. In other words, there is no resentment because The People excused you?

A. No, sir.

Mr. Turkus: Mr. Link is satisfactory to The People of the State.

Mr. Rosenthal: We rest on the record.

The Court: Before selecting the alternates, of course, the oath will have to be administered to the jury. This question is asked of all twelve members of the jury: Since you were tentatively accepted by both sides at the conclusion of your examination, you have been repeatedly cautioned by the Court not to discuss the case, not to let anybody talk to you about it, not to read the newspapers or otherwise read about it, not to listen to the radio about it. I am going to ask each one of you gentlemen individually if you have strictly followed those instructions.

(Mr. Stevens, Mr. Prentice, Mr. Murphy, Mr. Day, Mr. Gill, Mr. Cummings, Mr. Hall, Mr. Cross, Mr. Butt, Mr.

Edghill, and Mr. Rorke each answered individually, "I have.")

The Court: Mr. Link, I do not have to ask you; you [fol. 2722] were only accepted this morning.

Mr. Rosenthal: May I suggest to the Court that one other question be asked: Has anything happened in any way that would change any of the answers they have given?

The Court: The question is now: Has anything happened to change your viewpoint in regard to the case in the meantime, to change your attitude as impartial jurors? If so, raise your hand.

(Juror No. 9, Mr. Butt, raises his hand.)

The Court: This will have to be at the bench, and not in the hearing of the jury.

(Counsel for the defense and Mr. Turkus appear before the bench with Mr. Butt.)

(Mr. Butt was questioned by the Court without the hearing of the jury, as follows:)

By the Court:

Q. What has happened?

A. There has just been a great conviction on my part towards prejudice in this case.

Q. Based upon what?

A. Based upon the various questions that have been asked in court.

Q. Nothing outside of the court-room?

A. Nothing outside of the court-room, no, sir.

Q. You know that the questions that are asked jurors or talesmen do not indicate in any way the guilt or innocence of the accused. Are you sure this is not just a design to go [fol. 2723] back to the savings bank?

A. No, sir, it is not. It is more important. I realize it, too. There has been great prejudice in my mind about the case. All last night I thought about it. I have not talked about it to anybody.

Q. Do you mean it would prevent you from rendering a fair and impartial verdict?

A. I am afraid so.

The Court: What do you say, gentlemen? You cannot try this challenge. This has to be done quietly, without the presence of the jury. Do all of you consent?

Mr. Barshay: All of the defendants consent.

Mr. Rosenthal: Of course, reserving any exceptions we have taken heretofore.

The Court: Precisely. This is in fairness to the defense. The man has a feeling in his mind which he has frankly expressed. The Court believes it to be an honest one.

(JOHN E. COLEMAN, called as a talesman, was examined as to his qualifications by Mr. Turkus.)

Q. Where do you live?

A. I live at 308 East 8th Street.

Q. That is in Flatbush?

A. Yes, sir.

Q. I take it you did reside on St. Johns Place?

A. Yes, sir.

Q. You are listed as a business representative. What outfit do you represent?

A. The Brooklyn Edison, eleven years.

Q. Prior to then did you engage in any occupation?

A. Yes.

[fol. 2724] Q. What was your work then?

A. Manager for the Kelvinator Refrigerator.

By the Court:

Q. You live on Nostrand Avenue?

A. I did, your Honor, between New York and Brooklyn.

By Mr. Turkus:

Q. Are you married?

A. Yes, sir.

Q. Have you lived in Brooklyn most of your life?

A. Yes, sir, all of my life.

Q. I take it you have listened to the questions and are a little tired of hearing them.

A. I did not.

By the Court:

Q. There is a little church there at Beverley Road near your street?

A. One on the corner of East 8th and Beverley. I am in the middle of the block.

Q. Do you belong to that men's club?

A. No, sir.

Q. Have you attended any meetings?

A. No, sir.

By Mr. Turkus:

Q. Have you been engaged as a juror in the trial of any criminal case?

A. Not heretofore.

Q. Have you been ever called for jury service?

A. Yes, sir.

Q. Has it been since Judge O'Dwyer was District Attorney?

A. Yes, sir.

Q. Was it in any case in which I was prosecutor?

A. No, sir.

Q. Was it in any case in which any of these lawyers were [fol. 2725] defense counsel?

A. I don't believe so.

Q. Have you any conscientious scruples or otherwise against capital punishment?

A. No, sir.

Q. Is there anything in your background that we need know in connection with your possible contact with the garment clothing section or the garment truckers, or the Brownsville-East New York section, or the Brooklyn waterfront?

A. No, sir.

Q. Or with any union officials of the Amalgamated, or the Clothing Truckers Union, have you had any contact with them?

A. No, sir.

Q. I take it you are in sympathy with law enforcement?

A. Yes, sir.

Q. Do you know of any member of the bar who specializes in the defense of criminals?

A. No, sir.

Q. As you are sitting there, is there any reason why you cannot be a fair and impartial juror in the discharge of your duty to the People of the State of New York and to these defendants?

A. No, sir.

Q. You do not get any idea about the trial of a case from questions that are either asked you by the prosecutor or the defense lawyers; you get your ideas and impressions and conclusions when the case starts and you hear the evidence.

A. Yes, sir.

Q. But in order to examine a juror as to his state of mind it is necessary to ask certain questions, for example, have you heard the discussion about accomplice testimony?

A. Yes, sir.

[fol. 2726] Q. Have you heard the discussion about the legal rights which accrue to every man charged with crime?

A. Yes, sir.

Q. In this particular case, will you take the law implicitly from Judge Taylor, the trial judge?

A. Yes, sir.

Q. Take the law from him, and your obligation as a juror is to apply it with common sense and understanding to the testimony you get in court?

A. Yes, sir.

Q. Will you use your mental faculties in doing that?

A. Yes, sir.

Q. You have had experience as a business representative?

A. Yes, sir.

Q. And you talked things over with them logically?

A. Yes, sir.

Q. Will you use the same common sense and logic when you talk the case over with the other jurors?

A. Yes, sir.

Q. Will you give to these defendants on trial the benefit of everything the law of the land says they should have, the presumption of evidence, the doctrine of reasonable doubt, every legal thing that can be given to them and for their benefit? The Judge will tell you about it. Will you give it to them?

A. Yes, sir.

Q. Will you, after hearing all the evidence in the case, if then you have a reasonable doubt as to their guilt, acquit them?

A. Yes, sir.

Q. Now, by the same token, when you get all the evidence [fol. 2727] in this case, and your conscience is satisfied beyond a reasonable doubt that these are three guilty men, three who played the part in the commission of this crime, a group or combination, which witnesses will tell you about in court, will you say that in your verdict?

A. Yes, sir.

Q. There is one little thing I want to go over very hurriedly and then I will be through. There will be testimony in this case which will emanate or come from accomplices. Do you understand by now what an accomplice is?

A. Yes, sir.

Q. You have no illusion about accomplices?

A. No, sir.

Q. Do you understand that we apply the legal test, the common sense test, in conjunction with the believability or credibility of an accomplice?

A. Yes, sir.

Q. And that test, with respect to an accomplice, is a little different. The Judge will tell you what those tests are.

A. Yes, sir.

Q. Will you keep in mind, no matter what the tests you apply are, whether it be, Has he got a motive? or, Has he a past criminal record? Has he been steeped in crime and criminal association all his life? You apply all those tests to find out does he speak the truth, not only about himself but about them?

A. Yes, sir.

Q. Will you devote your mental faculties to find out does the accomplice in this case speak the truth about them and the part that each one played as a group or combination in [fol. 2728] killing the victim named in the indictment?

A. Yes, sir.

Q. Something has been brought out here by one of the lawyers, and he has very properly said it is not by way of sympathy and certainly not intended to prejudice, but the fact remains the man has been convicted of other crimes and is presently serving another jail term. Having in mind that he is presently in jail, would you relax your duty as a juror in this case simply because he is paying the penalty for other offenses for which he has been convicted?

A. No, sir.

Q. Would you be sympathetic or would you deviate from a proper consideration of the case because of the fact he is in jail?

A. No, sir.

Q. Of course, it has been brought out by a lawyer of the defense that there is an indictment here that the defendants are to meet—the only charge in the indictment; by the same token the District Attorney is permitted by law to put in evidence to establish the guilt of these defendants beyond a reasonable doubt.

A. Yes, sir.

Q. Now, is there anything that, as prosecutor of this indictment, I should know as to your qualifications to sit here as a juror?

A. No, sir.

Q. Has anything happened in your past experience or in the present manner in which you earn your livelihood which would in any way embarrass you or cause you to hesitate in rendering a verdict of guilty, if that is what you feel should be rendered after hearing the evidence?

[fol. 2729] A. No, sir.

Q. May I leave you with this understanding: that you will discuss the case with common sense and reason with your other jurors, and that you will render a verdict that reflects justice in the case?

A. Yes, sir.

By Mr. Talley:

Q. I was not able to hear your answer with respect to the business you were in.

A. The Brooklyn Edison.

Q. How long have you been with the Brooklyn Edison?

A. Eleven years.

Q. Have you read anything about this case?

A. Yes, sir, read quite extensively about it.

Q. May I ask you what paper you read?

A. The *World-Telegram* and the *News*.

Q. Did you read the continued story printed more than one night about this case?

A. No, sir.

Q. Did you discuss this case with anybody?

A. No, sir.

Q. Since you have been called as a prospective juror, did you talk it over with anybody?

A. No, sir.

Q. With the family or anyone else?

A. No, sir.

Q. As the result of the article you read, have you formed any impression about these defendants?

A. In reference to this case?

Q. In reference to the defendants, apart from this?

A. I have read the paper, my normal course of reading. [fol. 2730] Q. In the normal course of reading and as a result of it, did you form any opinion about the guilt or innocence of these defendants?

A. No, sir.

Q. Did you form any impression about them one way or the other which you think might be a handicap or advantage to them as you sit as a juror in this case?

A. No, sir.

Q. You have no impression unfavorable to them at the start?

A. No, sir.

Q. You have not sat as a juror in a criminal case before?

A. No, sir.

Q. Nor in a civil case?

A. Yes, sir, I have sat in a civil case.

Q. The Court will instruct you as to the law here. You will find the rules of law as far as the conduct of a criminal case is concerned, vastly different than that of a civil case. The Court will instruct you that in the matter of proof there is a difference. In a civil case the jury must be satisfied by the fair preponderance of evidence, and if the scale tips a little bit to one side or the other, that is enough. But the Court in this case will charge you that you cannot bring in a verdict of guilty, for instance, against these defendants or any of them, unless you are satisfied beyond a reasonable doubt—beyond a reasonable doubt—as to their guilt. And the Court will instruct you as to what a reasonable doubt is. In a word, he will say it is the kind of a doubt a man might [fol. 2731] have about any of the ordinary affairs of life, but it must be based on reason. You must be able to give a reason for it. My question to you is, after hearing all of this testimony and giving it the consideration which you think it deserves, if you have a reasonable doubt in your

mind as to the guilt of these defendants, will you give them the benefit of that doubt?

A. Yes, sir.

Q. There is no question in your mind but you will be able to do that?

A. No, sir.

Q. You would not hesitate because of things you read in the newspaper or things that might be said by my friend, the Assistant District Attorney, to bring in a verdict of "Not Guilty" against these men if you were not satisfied they were guilty?

A. No, sir.

Q. Outside of anything you have been asked by either Mr. Trukus or myself, is there any reason you can think of that would prevent you from sitting as a fair and impartial juror in the trial of this case?

A. No, sir.

Q. The District Attorney has made it plain that part of his case, at least, will be made up of testimony of accomplices. That is, men who say they participated in the crime, and they will testify against these defendants. They may be men of bad reputation, crooks, criminals, murderers, and the Court will charge you that it is your duty in scrutinizing or weighing the testimony of that type of witness, an accomplice in the crime, who has testified, the motive he has for testifying against somebody else whom he says is in [fol. 2732] the crime, too; the Court will advise you that that type of testimony must be scrutinized with great care and great caution and suspicion as to whether or not such a man is telling the truth. Will you be extremely careful to apply that test, that acid test, to accomplice testimony when it is produced in this trial?

A. Yes, sir.

Q. And you will judge for yourself whether or not a man who has committed murders and has committed robberies and admits it, and has perjured himself under oath on previous occasions, whether he is the type of a man you want to believe on anything. Will you regard his testimony in that way?

A. Yes, sir.

Q. You will discuss this matter with your fellow jurors frankly and fairly?

A. Yes, sir.

Q. But if your mind is not changed and your conscience is not satisfied, and you are not satisfied beyond a reasonable doubt of their guilt, you will not be afraid to stand on your opinion, no matter what the other gentlemen in the jury room may do?

A. Yes, sir.

By Mr. Barshay:

Q. While you were sitting here did anything occur in the court-room to cause favor or prejudice to either side?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. I take it you realize as well as anyone else the extreme importance of getting an impartial jury?

A. Yes, sir.

[fol. 2733] Q. So that now there is no prejudice in your mind, or anything at all which would preclude you from giving Mr. Buchalter a fair trial?

A. Nothing.

Q. And, above all, the fact that he is now incarcerated for a period, a long term of years, that fact alone would not cause you to relax in your duty to be fair to him?

A. No, sir.

Q. We do not want any sympathy, we simply want to know whether a juror would feel prejudiced against a person because he is in that position.

A. I understand.

Q. Some people would, and they have a right to if they want to. You said you had no prior experience?

A. No.

Q. You did have some experience as a civil juror?

A. Yes, sir.

Q. Whatever the instructions on the law are, you will be guided here only by what the judge tells you?

A. Yes, sir.

Q. You can understand it is possible for a Grand Jury to indict an innocent man?

A. Yes, sir.

Q. And that the indictment here is an accusation?

A. Yes, sir.

Q. And the defendant, by his plea of "Not Guilty," leaves the job for you to decide?

A. Yes, sir.

Q. When he says, "Not Guilty," he means he denies every accusation that the People accuse him of, every single one of them; do you understand?

A. Yes, sir.

Q. And no matter who may claim he is an accomplice, [fol. 2734] Mr. Buchalter's plea of not guilty puts that at issue, and then it is for you to decide whether or not that person is telling the truth. Now, in every case, willingly or not, there may creep in atmosphere.

A. Yes, sir.

Q. Sometimes atmosphere results by the procedure in court, by the bringing of these men into court having them handcuffed. That has nothing to do with their guilt or innocence?

A. No, sir.

Q. Sometimes reference to the defendant by a name like Lepke, would that influence you?

A. No, sir.

Q. A man who is charged with crime is presumed to be innocent; that is all you are concerned with. If a man comes here and says, "I am an accomplice of Mr. Buchalter," will you search to find out whether they are hoping to get something for saying it?

A. Yes, sir.

Q. Is he one of a group who will come here and try his utmost to put in any kind of testimony, will you look into that?

A. Yes, sir.

Q. The mere raising of his hand and saying, "My conscience is now being cleared; I am telling the truth now," you will not swallow that alone?

A. No, sir.

Q. The rules that apply to accomplice testimony as given by his Honor, you must look upon with care and caution—you will take that seriously?

A. Yes, sir.

Q. And if someone else comes and says he is an accomplice and corroborates him, that would not be enough unless [fol. 2735] there is other evidence independent of those people's testimony which tends to connect the defendants with the commission of the crime?

A. Yes, sir.

Q. You will take into consideration, if he declares himself to be an accomplice of Buchalter, that in fact he never saw that accomplice, if that should be the fact?

A. Yes, sir.

Q. And if someone comes here and claims he is not an accomplice, and the evidence shows he is, it will be for you to decide whether he is telling the truth?

A. Yes, sir.

Q. It may be that a bad man can tell the truth sometimes, and he may be telling the truth about himself and lying about Buchalter—that is possible?

A. Yes, sir.

Q. That is why the law has said it should be weighed with caution and suspicion; you have heard that, and you agree with that?

A. Yes, sir.

Q. If the other evidence which tends to connect the defendants comes from a polluted source, a criminal source, which may have a motive, you will weigh their testimony with a great deal of care before you accept it?

A. Yes, sir.

Q. And do you agree with the proposition of law that the burden of proof is always with the defendant—that he has no burden at all—you understand that? It is for the District Attorney to establish; it never shifts. Do you agree with that?

A. Yes, sir.

Q. And that no accusation made against Buchalter need [fol. 2736] be explained by him under our law, and that is the law, and you say you are in sympathy with it?

A. Yes, sir.

Q. He may take the stand—it will be up to his lawyer—but if he does not you may not hold that against him. If others do take the stand and he will choose to remain silent, that would not influence you with respect to him?

A. No, sir.

Q. He is getting a separate trial here, you understand?

A. Yes, sir.

Q. Whatever is binding upon him you will consider being binding upon him, and if it is not, you will not consider it?

A. Yes, sir.

Q. Mr. Turkus, by full evidence, competent evidence, will have to prove he is part and parcel of any scheme—that will be his job—mere association alone is not sufficient, you un-

derstand, and if the proof is subject to two interpretations, one of guilt and one of innocence, the Court will give you instructions on the law with respect to that, and will you follow the same?

A. Yes, sir.

Q. The law says that every defendant is entitled to a fair trial at your hands. Will you give it to Mr. Buchalter?

A. Yes, sir.

By Mr. Rosenthal:

Q. Have you ever sat in a jury?

A. No, sir.

Q. You say you were called?

A. Yes, sir.

Q. When is the last time?

A. The last one, Judge Leibowitz.

[fol. 2737] Q. Were you excused after you got in the jury box?

A. I was asked and I answered.

Q. Have you had any discussion at all about this case?

A. No, sir.

Q. Have you formed any impression of any character in the court-room?

A. No, sir.

Q. Your mind is clear now as to the fact that you can sit here as a fair and impartial jurymen and take the evidence from the witnesses?

A. Yes, sir.

Q. And the law from the Court as he gives it?

A. Yes, sir.

Q. Were you seated in a part of the court-room where you could hear the questions I addressed to the other jurors?

A. Yes, sir.

Q. Did you follow the questions in your own mind as to whether your answers would be similar ones?

A. Yes, sir.

Q. And would they?

A. Yes, sir.

Q. There is no necessity for repeating them then. Your answers, if all of those questions were addressed to you, would be similar to the answers given by the others?

A. Yes, sir.

Q. Now, is there any reason at all that has not been urged by my questioning on the part of anyone, by the Court, Mr. Turkus, or any member of the defense, which would in any wise incapacitate you from sitting as a fair and impartial juror?

A. The only thing is it might be inconvenient at home.

Q. That is something you will have to talk to the Judge [fol. 2738] about. Let me ask you this: When you say "inconvenient," what does your family consist of?

A. My wife.

Q. Is your condition at home of such a nature that if you were sworn as a jurymen here your mind would be at home with your wife, and thereby detract your mind from the consideration of the testimony?

A. No, sir.

Mr. Rosenthal: The juror stated his wife was alone at home, but I asked him the legal question, which, of course, he answered properly, so anything your Honor may want to do is up to your Honor.

By the Court:

Q. You mean you cannot serve because you will have to be home?

A. I would not use that expression. My wife is living home. I am janitor of the house. We have no oil burner. It would mean somebody would have to take care of that.

Q. You could have saved a lot of time if you had stated that at first.

A. In the first place, it was never asked of me. It was asked about the defendants and the case. I could not say that would have some bearing.

Q. Is there anybody else home?

A. No, sir.

Q. When you say "janitor," do you mean you take care of an apartment?

A. I live in a two-family house; there is a tenant on the second floor.

Q. You own the house?

A. Yes, sir.

Q. Is there anybody else living there?
[fol. 2739] A. There are people upstairs, tenants, and my wife.

Q. The oil burner requires no attention.

A. I said I haven't any oil burner.

Q. You have nobody to go down to attend to the coal?

A. No, sir.

Q. Who attends to it during the day?

A. It is of the type that in the morning it is sufficiently set until I am home in the evening.

Q. Your wife never attends to it?

A. No, sir. We have only been in the house a little over two months.

Q. Well, most of those two-family houses are in localities where there are people who attend to furnaces.

A. I believe there is such a thing in the neighborhood, but I would have to make some arrangements, if I were to serve, to have him take care of it.

Q. We want to know if you can do it; we want to know now.

A. Yes, sir, I can do that.

Q. There is a man who can come in and do it?

A. Yes, sir.

By Mr Turkus:

Q. Are you going to be worried about home conditions?

A. No.

Mr. Turkus: Satisfactory to the People of the State.

Mr. Rosenthal: We rest on the record.

(The twelve jurymen were then sworn by the Clerk.)

The Court: It appearing to the satisfaction of the Court that a statutory ground exists, the Court directs that two [fol. 2740] alternate jurors be impaneled and sworn.

Now, the Court will permit Counsel for the defense to try to agree on whether they desire that the challenges as to each of the alternates be applied as against each separately or be used as a whole against both. The Court will be agreeable to whichever decision counsel for defense shall make. The statute is capable of either interpretation.

Mr. Barshay: If your interpretation is that we may take it as a whole, we would like to do so.

The Court: That is a total of six challenges on these two, collectively.

(Frank C. Moffat, No. 3106, and Thomas C. Smith, No. 3109, were then called as alternate jurors.)

The Court: Now, these two gentlemen are at present regarded as No. 1 and No. 2 in the order in which they were called, but should No. 1 be excused and No. 2 remain, No. 2 will become No. 1. Is that understood? Is it agreeable?

Mr. Rosenthal: Yes, sir, that is very agreeable to the defendants.

The Court: Because, should the alternates have to be used, they will have to be used in the order in which they are so designated—No. 1 first, No. 2 second.

[fol. 2741] (Mr. Moffat and Mr. Smith were then examined collectively as to their qualifications.)

By Mr. Turkus:

Q. Mr. Moffat, you are in the insurance business?

A. Yes, sir.

Q. And Mr. Smith, you reside on East 23rd Street?

A. Yes, sir.

Q. Are you a salesman?

A. I am a manager, vice-president.

Q. Your jobs may be, more or less, to go right along with the entire case and then, I hope there will be no casualty, you may go home after hearing the case.

Mr. Moffat, how long have you lived at your present address?

A. Eighteen years.

Q. You have been in the insurance business a number of years.

A. Thirty-odd.

Q. In business for yourself?

A. Yes, sir.

Q. Mr. Smith, have you lived in Flatbush for a number of years?

A. Yes, sir.

Q. Have you been in business for a number of years?

A. Twenty-one years.

Q. Nothing about your knowledge of the crime that the District Attorney should know about?

A. No, sir.

Q. Do you know any of the officials of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Have you had any contacts in the Brownsville and East New York areas of Brooklyn or on the Brooklyn waterfront?

A. No, sir, I know people in Brownsville.

[fol. 2742] Q. Do you visit those people socially?

A. A couple of times.

Q. I take it you have listened to the questions put to the other gentlemen who have been examined?

A. Yes, sir.

Q. Do you feel any differently about any responses they made? Would you answer them any different?

A. No, sir.

Q. Or would you, Mr. Smith?

A. No, sir.

Q. Can I go along with the understanding that you have no bias or prejudice either against the prosecution or the prosecutor for using the testimony of an accomplice?

A. Yes.

Q. You have heard me define accomplice testimony?

A. Yes.

Q. And if there is other evidence in the case which tends to connect the defendants with this murder, and the part which each played in this particular homicide, if that is established to your satisfaction beyond a reasonable doubt, will you vote for conviction?

A. Yes.

Q. Will you give the defendants every presumption, every legal right?

A. Yes, sir.

Q. And after you hear all the evidence, if you feel then there is a reasonable doubt as to their guilt, will you vote for their acquittal?

A. Yes, sir.

Q. If you feel they have been established guilty beyond a reasonable doubt, is that the kind of a verdict you will render, without fear or hesitation?

A. Yes, sir.

By the Court:

[fol. 2743] Q. Mr. Moffat, you live on the block with that colored church?

A. No, sir, that is between Gates and Putnam.

Q. Is that No. 379 or 279?

A. 379.

Q. You are a block from the Church of the Nazarene?

A. Where the Church of the Nazarene was on Lefferts Place is two short blocks.

Q. Putnam Avenue begins at Grand and Fulton?

A. Fulton and Cambridge.

Q. You are between there and Gates?

A. Yes, sir.

Q. That is a rather long block?

A. Yes, sir.

By Mr. Talley:

Q. I did not hear your business, Mr. Smith.

A. Securities, Gardner, Kelly & Company.

Q. Mr. Moffatt, have you read **anything** about this case?

A. Yes, sir.

Q. Have you also, Mr. Smith?

A. Yes, sir.

Q. Mr. Moffatt, as a result of anything you read, have you formed any impression or opinion as to these defendants or as to this case?

A. I would say I got sort of a general impression, it is not anything very definite.

Q. Is the impression you have formed an impression unfavorable to these defendants?

A. As regards this particular case I don't think so. Newspaper stories do not enter into that.

Q. They are not always true?

A. No, sir.

Q. Any impression or opinion that has been created in [fol. 2744] your mind or formed in your mind, which you think would take evidence to remove as the case progresses?

A. No.

Q. These defendants would not start off with a handicap; they would not be carrying weight at the start because of any impression you may have gained from a newspaper?

A. No, sir.

Q. You are sure?

A. Quite sure.

Q. Mr. Smith, what reading—or what papers did you read about this case?

A. The *Tribune*, the *Times*, the *Sun*, the *Evening Telegram*.

Q. Did you read several articles in which their names were mentioned or in which this case was referred to?

A. Yes.

Q. Did you form any opinion or impression with regard to them or the case, or anything connected with it, as a result of reading these articles?

A. I formed an impression.

Q. Was it an impression unfavorable to these defendants?

A. It was.

Q. Do you think it would take evidence to remove that impression?

A. I do.

Q. So, very frankly, so far as you are concerned, they would start off with a bit of a handicap?

A. Yes, sir.

Q. The only thing that would remove that impression from your mind is evidence in the case?

A. Yes, sir.

Q. And you would expect that evidence to come from the defendants, wouldn't you?

A. Yes.

Q. Mr. Smith, you have a like impression?

[fol. 2745] A. My impression goes to the character of the defendants.

Q. You mean by character, what you gathered from reading the newspaper?

A. Yes, sir.

Q. On the assumption that what you read in the newspaper was true?

A. I don't know whether the newspapers are true or not, but that was my impression.

Mr. Talley: Challenge for cause.

THOMAS C. SMITH, residing at 714 East 23rd Street, sworn on the challenge.

By Mr. Talley:

Q. You were asked some questions before you were sworn. Now, having been sworn, were the same questions to be asked of you would your answers be the same?

A. They would.

By Mr. Rosenthal:

Q. You have sat in the court-room for a number of days?

A. Yes, sir.

Q. You have heard the instructions to the other jurymen on the law?

A. Yes, sir.

Q. You heard the Court state that at no time does the defendant have to establish anything?

A. Yes, sir.

Q. And, notwithstanding that fact, you have candidly stated the impression you have at this time is of such a nature you could not lay it aside and give these defendants a fair and a square deal?

A. Yes, sir.

Q. That is with full knowledge of the admonition which [fol. 2746] the Court has given to other persons who have preceded you in the box?

A. Yes, sir.

By Mr. Turkus:

Q. Is there anything in the reading matter which you read, as to who was killed in this case?

A. No.

Q. Or where he was killed?

A. No.

Q. Or how he was killed?

A. No. ? ~

The Court: Challenge sustained.

By Mr. Talley:

Q. Mr. Moffat, you have heard the questions put to the other gentlemen for the last few days?

A. Only for today.

Q. Have you served before on any criminal case?

A. Yes, sir.

Q. In this court?

A. Yes, sir.

Q. When did you last serve?

A. It was—I don't know the date—about a year ago, I think, was the last jury I was called on.

By the Court :

Q. Where is your insurance place of business?

A. 151 William Street, New York.

Q. Is it general insurance?

A. Yes, sir.

Q. Fire?

A. Yes, sir.

Q. What is the name of the concern?

A. Moffat & Blank.

Q. How long have you been in business?

A. Thirty-three years.

Q. Do you do much business with the garment trade?

[fol. 2747] A. No, sir. Some, not much.

Q. Are you married or unmarried?

A. Married.

Q. Do you live in a flat or a house?

A. Yes, sir.

Q. Will your wife be alone while you are serving?

A. Unless some friends stay with her.

Q. That could be arranged?

A. Yes, sir.

By Mr. Talley :

Q. That service you had with the Amen investigation, that was in the Supreme Court?

A. No, sir. We were there for a couple of days and I think they all pleaded guilty.

Q. You didn't really serve on the jury?

A. No, sir, not in that case; I was called. The jury was called, and the case was dismissed.

Q. Have you ever been called to sit as a juror in a trial in this building, in the County Court?

A. Yes, sir.

Q. How long ago was that?

A. Possibly a year and a half.

Q. Before what judge, if you remember?

A. I don't recall.

Q. Was it a murder case?

A. It was.

Q. Did you hear the instructions from the Court with regard to that case?

A. Yes, sir.

Q. You say that was approximately two years ago?

A. Approximately a year and a half or two years ago.

Q. Was Mr. Turkus, my handsome friend, the District Attorney, in that case?

A. No.

Q. Were any counsel you now see around this court-room [fol. 2748] in that case?

A. Barshay was.

Q. Did you form any impression about Mr. Barshay that was so unfavorable that you could not give the defendants a fair trial in this case?

A. No, sir.

Q. Did you ever serve in a Grand Jury?

A. No, sir.

Q. From your previous service you must know that the Court will charge you, before you can arrive at a verdict of conviction, that you must be satisfied of the guilt of the defendants beyond a reasonable doubt, and that the presumption of innocence always exists in favor of any defendant when he comes in a criminal court?

A. Yes, sir.

Q. Will you accord to that defendant and to each of them that presumption of innocence?

A. Yes, sir.

Q. Will you require The People to undertake that burden?

A. Yes, sir.

Q. Will you require them to satisfy you beyond a reasonable doubt before you vote Guilty against these defendants?

A. Yes, sir.

Q. The burden being always on The People to prove the guilt of the crime which is alleged in the indictment, which you know is nothing more than an accusation in writing and does not import guilt in any respect whatsoever?

A. No, sir.

Q. If, in an endeavor to sustain the indictment, the People produce accomplices here—you know what an accomplice is?

A. Yes, sir.

[fol. 2749] Q. Who will testify with respect to these defendants, will you scrutinize the testimony of a man who admits he is an accomplice?

A. Yes, sir.

Q. Not only that, but should he admit he is guilty himself of countless murders, many murders, and has on previous

occasions sworn to tell the truth and lied, will you scrutinize that kind of testimony with great care and great caution and great suspicion before you give it credence?

A. Yes, sir.

Q. Then the law requires, and it is a protection for the innocent more than it is for the guilty—the law requires, where accomplice testimony ~~is~~^{is} produced, the jury may not convict upon the testimony of an accomplice unless there is some other independent evidence produced apart from the accomplice that tends to connect the defendants with the commission of the crime. Will you require, if selected as a juror, that independent testimony, before you give any attention to the testimony of the accomplice?

A. Yes, sir.

Q. And, the burden being always on The People to prove the guilt of a defendant, it is not required that a defendant take the stand in his own behalf or offer any defense; you understand that?

A. Yes, sir.

Q. And that it is the law, and you will be so charged by the Court, that if a defendant does not take the stand and testify, that no jury may indulge in any unfavorable inference as to him because he has not taken the stand. Will [fol. 2750] that be your position, if selected?

A. Yes, sir.

Q. Is there anything you know of which we have not interrogated you about, is there anything in your mind that you think might in any way interfere with your being a fair and impartial juror in this case?

A. No, sir.

Mr. Turkus: Satisfactory to The People.

(Mr. Moffat was challenged by the defense peremptorily.)

(JOHN J. McNULTY, No. 3065, was then called and seated as Alternate Talesman No. 1.)

Mr. Talley: I wish to advise the Court that this gentleman is an old friend of mine and my brother. He was a college classmate of my brother, and I wish to advise the Court and the District Attorney of that in advance.

The Court: He still may be fair.

(GEORGE A. FAIRBROTHER, No. 3032, was then called as Alternate Talesman No. 2.)

By Mr. Turkus:

Q. Mr. McNulty, do you know Judge Talley for a long time?

A. Yes, sir.

Q. Were you interested in his campaign when he wanted to be the Democratic nominee for Mayor?

Mr. Talley: I object; that is absurd. The time of the Court should not be taken up with such questions.

Mr. Turkus: You know it has nothing to do with the case, [fol. 2751] but you put it in in reference to Judge O'Dwyer.

Mr. Talley: It has nothing whatever to do with the case, and I did not put it in.

The Witness: I am always interested in anything Judge Talley is interested in.

Q. If you are called, will you be embarrassed or prejudiced?

A. I would not be embarrassed.

By the Court:

Q. You are in what line of business?

A. Transfer agent in the Guaranty Trust Company.

Q. You have been with the Guaranty Trust Company how long?

A. Thirty-eight years.

Q. Is that a responsible position?

A. It is.

Q. It means that a man who has it is a man of brains, judgment, and a man who also has strength of mind; am I right?

A. Yes.

Q. You can disregard friendship in deciding questions of fact?

A. I can.

Q. It is the same as a banking officer, disregarding friendship in deciding whether to make or not to make loans?

A. Yes, sir.

Q. In other words, have a glass eye?

A. Yes, sir.

Q. You live between Avenue J and K?

A. Yes, sir.

Q. How long have you lived there?

A. Twenty-four years.

Q. Do you belong to any organization that has discussed [fol. 2752] Judge O'Dwyer's activity in the District Attorney's office?

A. No, sir, I do not.

Q. Have you formed any prejudice in the case?

A. No, sir.

Q. Any opinion?

A. I have read about it. I have my opinions, but they have not been fixed.

Q. Have you formed any opinion as to the guilt or innocence of the defendants or any of them on this charge?

A. I could not say on this charge, because I don't know what the charge is.

Q. Is there anything on your mind that, as a man of intelligence and independent thought, you cannot put aside in deciding this issue strictly upon the evidence, as an impartial juror?

A. I could.

By Mr. Turkus:

Q. What is your relationship toward Judge Talley?

A. I went to school with Eddie.

Mr. Talley: That is my brother.

Q. Would the fact that Judge Talley and I had a tilt just now, and we may have more before the case is over, would that be inclined to prejudice you against The People?

A. No, sir.

Q. Is your friendship with his brother such that you would have the slightest embarrassment in rendering the verdict which you think proper on the evidence, even though it affects Judge Talley's client adversely?

A. I don't want to be subject to any criticism. I know him.

Q. I want to know your state of mind.

[fol. 2753] A. My state of mind is that I have read a little about it, and, of course, naturally I have an opinion. I will wait to see what the evidence is and see if that will take the opinion away.

Q. Is that opinion detrimental to the defendants?

A. It is.

Q. You say something will have to take it away? The defendants do not have to do anything.

A. I know that.

Q. Was that opinion formulated by you from reading the press?

A. That is correct.

Q. Have you had any discussion with any member of the bar in regard to the investigations of Judge O'Dwyer?

A. No, sir.

Q. You say you have an opinion which is adverse to the defendants?

A. Adverse, so far as you have to show proof to take it out of my mind.

Q. I am certainly not going to offer any proof that is going to reform jurors.

A. Then it is the opposite of what I said.

Q. You would expect proof from the defendants?

A. Yes, sir, proof from you.

Q. I am the prosecutor. You say your opinion is adverse to the defendants.

A. Of course, I have my opinion about them, but I feel if they are on trial it is up to you to prove them guilty.

Q. Would you expect any evidence from the other side to remove the impression you gathered?

A. Absolutely not.

Q. Were you here when we had a previous discussion [fol. 2754] about the various types of witnesses?

A. I was not listening very carefully.

Q. Mr. Fairbrother, you reside in Coney Island?

A. That is the old Gravesend Section.

Q. Have you lived there for a number of years?

A. Sixteen.

Q. You are listed as assistant dispatcher. Is that with the railroad company?

A. The Brooklyn Edison Company.

Q. Have you been there for a number of years?

A. Yes, sir.

Q. Have you heard the questions we have asked the other jurors?

A. Yes.

Q. Would you make any different responses than the jurors who have been accepted?

A. No, sir.

Q. Do you find any fault with the District Attorney of

the county, Judge O'Dwyer, in the prosecution of an indictment wherein the testimony of an accomplice is used?

A. No, sir.

Q. Have you served as a juror in connection with criminal cases before?

A. No, sir.

Q. You will receive the law from Judge Taylor, which you will apply with your common sense and understanding to this case?

A. Yes, sir.

Q. You understand we are trying a case of murder. Is there anything I should know about you that I have not asked?

A. No, sir.

By the Court:

Q. What are you a dispatcher for?

A. Workmen and material, Brooklyn Edison Company. [fol. 2755] Q. I don't see how they can get along if they have so many jurors here—How long have you been with them?

A. Fifteen years.

By Mr. Turkus:

Q. Mr. McNulty, is there anything the People of the State of New York should know about your ability to sit as an impartial juror?

A. No, sir. I don't know whether the fact I take care of subpoenas in my office—I have about five on my desk now.

Q. For the criminal court?

A. Yes, sir. I look after forgeries and raised certificates and all this stuff that takes place all over the country.

Q. That brings you in cooperation with the District Attorney?

A. I am called before the Grand Jury and other boards.

Q. Do you mean Mr. Dewey's office?

A. Mr. Dewey's—very few here.

Q. Your work brings you in close contact and association with various courts throughout the country—there is nothing about your friendship with Judge Talley's brother that is going to be at all embarrassing to you?

A. That is right.

Q. Now, both of you gentlemen, if, after hearing the evidence in the case, if you really have a reasonable doubt as to their guilt, turn them out. After I get through with the evidence which Judge O'Dwyer presents, after you hear it all, you talk it over among yourselves, and if you are satisfied yourselves that there are three guilty men, each of them, [fol. 2756] who played a part in this combination or group as charged in the indictment, would you say so by your verdict and without any hesitation?

A. Yes, sir.

Mr. Barshay: We peremptorily challenge Mr. McNulty.

By Mr. Talley:

Q. Mr. Fairbrother, have you sat on a jury in a criminal case before?

A. Conspiracy case.

Q. That was a criminal case, prosecuted by the District Attorney?

A. Yes, sir.

Q. In this court?

A. In the Supreme Court.

Q. In this county?

A. Yes, sir.

Q. How long ago was that?

A. A few years ago.

Q. Have you read anything about this case?

A. No, sir.

Q. In none of the papers?

A. No, sir.

Q. Have you discussed the case about the defendants?

A. No, sir.

Q. With anyone?

A. No, sir.

Q. Have you formed any opinion or impression about the case?

A. No, sir.

Q. Or about these defendants, of any sort whatsoever?

A. No, sir.

Q. So that the case and these defendants are both entirely foreign to you?

A. Yes, sir.

Q. The Court will charge you that The People are re-

quired to prove the guilt of any defendant brought into a [fol. 2757] criminal court beyond a reasonable doubt. That means that the defendant is never called upon at any time to make any answer or explanation, because the burden is always on The People to prove guilt.

A. Yes, sir.

Q. If selected, will you require The People to sustain that burden they undertake from the time they file the indictment?

A. Yes, sir.

Q. If you have a reasonable doubt in your mind, after hearing all the case and considering all of the evidence, will you give the benefit of that doubt to the defendants?

A. I will.

Q. If the defendants do not take the stand, or some of them do not take the stand, and the Court instructs you you are not to indulge in any unfavorable inference against them because of their failure to take the stand, will you act accordingly and not hold any inference against them because they do not, under advice of counsel or otherwise, take the stand?

A. Yes, sir.

Q. Have you been sitting here for the last two or three days?

A. This is the fourth day.

Q. You have heard the questions asked about accomplice testimony?

A. Yes, sir.

Q. And you understand generally that proposition?

A. Yes, sir.

Q. If an accomplice, the men who say they are accomplices in this crime, testify against these defendants, will you scrutinize their testimony with care and caution and [fol. 2758] suspicion and try to ascertain whether they are not telling the truth because of any consideration they are expecting from testifying?

A. Yes, sir.

Q. The law requires, in addition to the testimony of such accomplice, corroboration—that there be some evidence independent of the testimony of the accomplice, coming from a good independent source, which will tend to connect the defendants with the commission of the crime, before the

jury can possibly find them guilty. Will you strictly abide by that direction as the Court will give it to you?

A. Yes, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. Do you know of any reason of any kind why you could not sit as a fair and impartial juror in the trial of this case?

A. No, sir.

By Mr. Barshay:

Q. In the case you sat on, on that jury, was the name Max Silverman prominently mentioned?

A. Yes, sir.

Q. You heard that name often during that case?

A. Yes, sir.

Q. Mr. Turkus has made inquiry of the other jurors with respect to the same name many times, so I have a right to assume that he played a part in this case; I don't know. Would the fact that Mr. Turkus was counsel once for Mr. Silverman—does that fact in anywise cause you to be influenced in your judgment in this case?

A. No, sir.

Q. Now, if Mr. Turkus should produce him in this case—[fol. 2759] I don't know whether he will or not, would it embarrass you, or would you be free from prejudice?

A. Yes, sir.

Q. Is there any other case where you have sat on a jury?

A. No.

Q. Since 1936 have you been a Grand Juror?

A. No.

Q. Have you formed any impression at all with respect to this case?

A. No.

Q. Did you read about it at all?

A. No, sir, I did not read anything.

Q. Not even about the defendants?

A. No, sir.

Mr. Turkus: Mr. Fairbrother is satisfactory to The People.

(Challenged peremptorily by the defense.)

(WILLIAM EARLE, No. 3091, was then called as Alternate Talesman No. 1, and WILLIAM R. SHAW, No. 3084, was called as Alternate Talesman No. 2.)

Talesman Shaw: If this trial is going to be a long one, I don't think I have the right mental attitude. I have sickness at home.

The Court: What is the trouble?

Talesman Shaw: Well, my wife and my mother, they are all alone.

The Court: You say there is illness at home?

Talesman Shaw: Yes, sir, my mother is very sick and has been sick for two or three years; I don't know whether she will survive.

[fol. 2760] The Court: Your presence is required?

Talesman Shaw: At night it would help a lot.

The Court: What is it, paralysis?

Talesman Shaw: No, sir, just old age, I guess, she is only eighty-two.

The Court: There is no one else at home except your wife?

Talesman Shaw: No one else.

The Court: We have ten in addition to this gentleman. Will it be agreeable to the defense if this gentleman were returned to the box at another time, holding him in reserve for a possible emergency, to avoid the drawing of another panel?

Mr. Barshay: It is agreeable to me to have him out of the box or to be placed in the box, if necessary.

Mr. Talley: That is agreeable all around.

(Talesman Shaw was then temporarily excused.)

(MR. J. J. CONATY, No. 3058, was then called and seated as Alternate Talesman No. 2.)

By Mr. Turkas:

Q. Mr. Earle, have you lived at your present address for a number of years?

A. Yes, sir.

Q. Are you married?

A. No, sir.

Q. A bachelor?

A. Yes, sir.

Q. You are listed as a clerk.

A. Yes, sir.

Q. Have you been with your employer for a number of years?

A. Twenty years.

[fol. 2761] Q. Mr. Conaty, you live in Flatbush?

A. Yes, sir.

Q. Have you lived there a number of years?

A. Nine.

By the Court:

Q. You are the branch manager of what?

A. The Aetna Casualty Insurance Company, 16 Court Street, Brooklyn.

By Mr. Turkus:

Q. Do you know any of the nine lawyers who represent these defendants, or any member of the bar who specializes in criminal cases?

A. Mr. Price.

Q. How well do you know him?

A. Since 1914.

Q. Have you discussed any of these cases with Mr. Price?

A. No, sir.

Q. Do you know him well enough to let him influence you?

A. It would not influence me.

By the Court:

Q. Mr. Earle, what concern are you with?

A. Metropolitan.

Q. Which branch?

A. The main office.

Q. Madison Avenue?

A. Yes, sir, and 23rd Street.

Q. How long have you been with them?

A. Twenty years.

Q. What particular line of work do you do?

A. Accounting and auditing.

Q. You are living near Kings Highway?

A. Yes, sir.

By Mr. Turkus:

Q. I will address these questions collectively to save time. Have you heard mention of the fact that the District Attorney [fol. 2762] inquired from the other talesmen whether they had any relations or contact in the garment trade, men's clothing or women's clothing, or the clothing trucking? Have either one of you had such contact?

A. No, sir.

Q. Are any of those union officials I inquired about, have you had any connection with them directly or indirectly?

A. No.

Q. Or in the Brownsville or East New York section or the waterfront?

A. I may have some brokers in Brownsville, but I don't know.

Q. Does that bother you?

A. It does not bother me.

Talesman Earle: May I interrupt? I have been under the care of a doctor, and I brought a certificate to the Judge.

Mr. Turkus: This is acute, according to the doctor's certificate.

The Court: You are under a doctor's care now, and taking something for it?

Talesman Earle: No, the care would be that I would have to stay in bed for about three days in order to get rid of it.

The Court: We do not want to draw another panel. Is it agreeable to allow him to step out? This gentleman, if he goes home, will have to go to bed.

Defense Counsel: That is agreeable.

The Court: Mr. Earle, go home and go to bed, and we [fol. 2763] will let you know if you are needed.

(WILLIAM H. FULLMAN, No. 3031, was then called as Alternate Talesman No. 2.)

The Court: Gentlemen, we will now take a recess and resume at 2:00 P. M. Please do not discuss the case; let nobody talk to you about it; keep your minds open.

The defendants are remanded.

Mr. Talley: May I be excused at two o'clock?

The Court: Counsel will agree among themselves as to who will be present at two o'clock.

Mr. Talley: Will the opening take place this afternoon?

The Court: The opening address on both sides requires preparation and a little rest over the week-end. It is not to be rushed into.

(Recess taken until 2:00 P. M.)

[fol. 2764] AFTERNOON SESSION—TRIAL RESUMED

(All defendants represented by counsel)

(Examination of William H. Fullman and J. J. Conaty was continued.)

By Mr. Turkus:

Q. Mr. Fullman, just before lunch you wanted to tell me something.

A. I wanted to tell you since the first of September I have been unemployed and prior to that for fifteen years I was with the *World-Telegram* in the advertising department.

Q. Does that fact—

A. I read all the papers about the case, so I would be prejudiced.

Defense Counsel: Challenge for cause.

The Court: I have not heard a word.

Mr. Turkus: This gentleman was with the *World-Telegram* for fifteen years in its advertising department, has read all the newspaper articles in connection with the case, and has a prejudice against defendants.

By the Court:

Q. Does it go to the formation of an opinion as to the guilt or innocence?

A. Yes, sir.

Q. Of any of the defendants in this case?

A. Yes, sir.

Q. On this charge?

A. Yes, sir.

Q. It cannot be laid aside?

A. No, sir.

The Court: Try the challenge.

[fol. 2765] WILLIAM H. FULLMAN, residing at 1497 East 34th Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Fischbein:

Q. Mr. Fullman, certain questions were asked by Mr. Turkus and you made certain responses and then Mr. Turkus made a general statement to His Honor for the record. Then Judge Taylor asked you certain questions. If those questions were asked again, would your answers be substantially the same as you have given?

A. Yes, sir.

Mr. Fischbein: Press the challenge.

The Court: Sustained. Proceed with the examination of the other talesmen.

By Mr. Turkus:

Q. Mr. Conaty, did you follow the questions that were put to the talesmen who were accepted?

A. I did.

Q. You saw what I was driving at when I was questioning them. Is there anything I should know about your qualifications?

A. I do not know of anything except that you did ask a question as to Mr. Price.

Q. Mr. Price had been the lawyer in one of the cases I tried against him, and I wanted to know whether there was such a close acquaintanceship as would prejudice you in this case.

A. No.

Q. Did you ever talk to Mr. Price about any of the cases?
[fol. 2766] A. No.

Q. Are you in accord with the other talesmen on the accomplice proposition?

A. Yes.

Q. No bias or prejudice against the District Attorney for the use of that testimony?

A. No.

Q. You will use your mental faculties to find out does the accomplice tell the truth about them?

A. Yes, sir.

Q. Have you served as a juror in any criminal case?

A. About sixteen or seventeen years ago.

Q. There is nothing mysterious about it. You have an issue to decide here: Are they established guilty under the evidence, or are they innocent of this murder charge? Do you understand?

A. I do understand.

Q. Will you accord to these defendants every law of the land that the Judge says they should have?

A. Yes.

Q. Burden of proof and so forth?

A. All of them.

Q. If, after you hear all of the evidence in the case, if then you entertain a reasonable doubt about any one of them, give them the benefit of it. Will you do that?

A. Yes.

Q. On the other hand, after you hear everything that Judge O'Dwyer presents to this Court and jury in connection with the Rosen murder case, if you are satisfied beyond a reasonable doubt that they are three guilty men, three of the group who played a part in the commission of this murder, will you say so in your verdict?

A. I shall.

[fol. 2767] Q. Is there anything that could stop you from saying that?

A. Nothing.

By Mr. Cuff:

Q. Mr. Conaty, by the same token, if after you hear all of the evidence and receive the instructions on the law from His Honor, after discussing it with your fellow jurors, you are satisfied that there is a reasonable doubt as to the guilt of the defendants or any one of them, will you have the fortitude and courage to reflect that in your verdict, to report that in your verdict of Not Guilty?

A. I shall.

Q. And if you do entertain such a reasonable doubt as I have described, one that is based upon the evidence or lack

of evidence, and his Honor should instruct you, as I think he will, that whenever a juror makes up his mind, after carefully considering the evidence and discussing with his fellow jurors, that he is in doubt or has any reasonable doubt as to the guilt of the defendant, that he must, it is his bounden duty to reflect that by voting "Not Guilty," will you do that?

A. I shall.

Q. You appreciate, do you not, that you are not responsible to any individual for your verdict in this case: is that right?

A. That is right.

Q. And that you owe the same duty, the same obligation, to each side in this case, that is to decide this case fairly on the evidence as you view it. That is true, is that right?

A. That's right.

[fol. 2768] Q. Might I ask, your office is here on Montague Street, is it not?

A. Court and Montague.

Q. Is that the Aetna Casualty & Surety Company?

A. It is.

Q. Have you ever discussed this case or any of its aspects with any of the people in the office of any District Attorneys?

A. I have not.

Q. And I do not know whether anybody asked you, but I should like to know whether you have read any of the articles that have appeared in any of the papers about the case or about the defendants or any of them.

A. When you say an article, do you mean a syndicated article?

Q. I mean the news items.

A. I have read a few news items, but not as a continued proposition.

Q. I appreciate that. In other words, you mean you did not follow it out with any acute interest?

A. That is correct.

Q. So as to look for it from day to day, but you did read news items and the articles as they appeared from day to day as part of your daily reading in the newspaper?

A. No, I did not.

Q. How many papers would you say you read about this case or the defendants?

A. After reading the first or second news items in one of the papers that I read, I decided to refrain from it.

Q. Was that before you were called?

A. Oh, yes.

Q. And you did not know then that you were going to be summoned on this panel?

A. That is right.

[fol. 2769] Q. Did you read any of the articles in the *Mirror*?

A. I did not.

Q. You do not read the *Mirror*?

A. No, sir.

Q. Now, as the result of that reading was there any impression formed in your mind?

A. Only the impression that I did not want to continue reading them.

Q. Was there any impression about these defendants that was adverse to them?

A. No, it was the subject-matter.

Q. You did not want to read about it at all. And as you sit here now, can you give me the assurance that if you are selected you will be able to, despite anything you have read, accord to the defendants on trial here to the fullest extent the benefit of the presumption of innocence which the law says must be given to every defendant? You will do that?

A. I will do that.

Q. You appreciate that that is just as much a part of our law as any other part of the Penal Law of the State of New York, do you?

A. I do understand.

Q. And you are in favor, of course, of the enforcement of all law?

A. I am.

Q. And do you also believe that you can, with courage and fortitude consider this evidence under the rules that His Honor will give you for considering the evidence and decide it fairly and squarely as between The People on the one hand and the defendants on the other?

A. I can.

[fol. 2770] Q. Mr. Turkus has referred to accomplice testimony. I do not want to waste much time about it. I assume you know what an accomplice is?

A. Yes, sir.

Q. Have you ever served on a jury before?

A. Yes, sir.

Q. In a criminal case?

A. Yes, sir.

Q. How long ago?

A. Sixteen years ago.

Q. Since that time you have not been called on a criminal case?

A. I have been called many times, three or four times a year.

Q. You have not served? Have you been on the special panel all that time?

A. Not a special panel. Just prior to '26 or '27—I would not be positive of it, it may have gone back a little further than that. When I said sixteen or seventeen years, it might have gone a little further than that. Judge Dike was sitting.

Q. Your name is familiar to me. Do you recall ever being called on any panel at a time when I was an Assistant District Attorney trying cases in Judge Dodd's office? I know your name is very familiar to me.

A. I have been around a long time.

Q. But you don't recall being on a panel?

A. I could have been, Mr. Cuff, but I don't recall.

Q. In any event, have you been recently called as a member of the special panel?

A. I was called this spring.

Q. And did you come to court?

A. Yes, sir.

Q. Did you reach the jury box, I mean to be examined? [fol. 2771] A. There have been so many of these cases—just give me a chance.

Q. Take your time.

A. The last case I think Judge Leibowitz was sitting and I think that we were sworn in the chair. I think on that particular case I was excused with the consent of both sides and with the Court's consent, by reason of the fact that my brother had previously qualified on the same jury ahead of me, and I did not ask—he was not asked whether or not he would be embarrassed if I sat on the jury.

Q. Was Mr. Turkus the prosecutor in that case?

A. No, he was not.

Q. Do you remember the name of the prosecutor?

A. No, I would not. It was not Heffernan.

Mr. Turkus: It may have been McGough.

The Talesman: He had a cultured voice.

Q. Mr. Conaty, on any of the other panels where you received a summons were you examined in the Jury box? I am leaving out this last one before Judge Leibowitz.

A. Yes, in many of them.

Q. And in any of those other cases were any of the lawyers who are here today either for the People or for the defendants involved that you can recall?

A. Possibly Mr. Barshay, but I think he was the only one.

Q. As the result of all of those calls, I am sure they did not leave anything in your mind that would prevent you from being absolutely fair and being able to carry out in full your obligation that you would assume when you take [fol. 2772] your oath as a juror if you are selected?

A. Certainly not.

Q. Referring to the accomplices, I am not going to waste much time trying to talk about law, but if His Honor tells you that when an accomplice testifies in a case and you come to consider the evidence of that accomplice, that you must regard it and weigh it with the mental attitude of suspicion, that you must accept it with care and caution, will you do that?

A. I shall do it.

Q. And if it shall develop during the course of the trial that the accomplice is a man of depraved character, who has committed numerous crimes, will you consider that in weighing his credibility, or his ability in your mind to tell the truth in any case or in this case? Will you do that?

A. I shall.

Q. You understand, do you not, Mr. Conaty, that no defendant can be convicted of any crime upon the testimony of an accomplice alone?

A. I understand that.

Q. You know that the rule of law is that before there can be a conviction on the testimony of an accomplice there must be independent evidence, and I mean by that evidence coming from someone who is not an accomplice, which you believe and which tends to connect the defendants with the commission of the crime and if his Honor shall charge that,

will you see that that rule of law is adopted and applied to the evidence so far as you are concerned when you are discussing it in the jury room?

A. I shali.

[fol. 2773] Q. As to any witness who may be called, if it should develop that the witness or witnesses who are relied upon for this independent evidence sought to be used as corroborating the accomplice, if it should develop that those witnesses or that witness has committed murder many times, perjury, extortion, and almost every other crime mentioned in the law, and His Honor tells you that it is your duty to take into account the character of that witness as thus shown and to weigh his evidence with great care, caution, and suspicion, will you do it?

A. I will.

Q. You appreciate, do you not, Mr. Conaty, that where there is testimony by men of that type, men whose characters are utterly depraved, that you may find a reasonable doubt based upon the type and character of witnesses of that kind? Is that the fact? Maybe my question is a little complicated.

Mr. Turkus: I object to that.

Mr. Cuff: I withdraw it.

Q. If the witnesses, including the accomplice and corroborating witness, are men of depraved character, that you find unworthy of belief, and that raises a reasonable doubt in your mind as to the guilt of the defendants or any one of them, will you reflect that?

A. You are asking two questions, I think Mr. Cuff.

Q. No, just one. There are two classes of witness.

Mr. Turkus: I am going to object to it. That is a legal question.

[fol. 2774] By the Court:

Q. Suppose you put it this way: Mr. Conaty, you are a practical man and a man of wide experience. You deal with people every day, and you are accustomed to judging whether people tell the truth or not. Will you take into consideration anything and everything that has to bear with the credibility of a witness?

A. I shall, your Honor.

Q. Including his criminal career, the fact that he is a criminal; is that one of the elements you will take into consideration?

A. Yes, that is one of the elements.

Q. And if he has been convicted, the fact of previous conviction?

A. That will be another one.

Q. Anything and everything?

A. Yes, sir.

Q. That makes common sense in determining if the man tells the truth?

A. That is right.

By Mr. Cuff:

Q. Now may I ask this question as supplementing what his Honor asked: Let us assume that it develops on the trial that a witness or witnesses admit the commission of many murders for which they have not been convicted. Will you take that into consideration too?

A. Yes, because I think that is one of the elements to test a man's character and believability.

Q. That is right; that is a perfect answer. And my question before was a little long, but it meant just this: That I am going to ask you simply now: If that type of witness [fol. 2775] and testimony raises a reasonable doubt in your mind, will you reflect it in your vote? If the character of the witness?

A. No, Mr. Cuff, I am not getting you right. Perhaps their credibility might be tested or perhaps weighed with care and caution, as you said.

Q. That is right.

A. Just because of that, should not raise in my mind a reasonable doubt, because the witnesses are a type that I would have to go to the extreme to weigh.

Q. I don't mean that. I mean if, after considering that they testified to and then considering their character, their depraved character, there arises in your mind a reasonable doubt as to the truth of their testimony, will you reflect that in your verdict?

A. Yes.

Q. I may not have made myself very clear, but that is just what I meant. You appreciate, do you not, that your responsibility when you take an oath as a juror in a criminal

nal case is to weigh the evidence carefully, discuss it reasonably with your fellow jurors, and then to reflect in your vote your conscientious view of the evidence as to guilt or innocence; is that right?

A. Yes.

Q. And if you arrive at the conclusion, after giving all that consideration that I referred to and discussing with your fellow jurors that there is a reasonable doubt as to the guilt of the defendants or any of them, can I rely upon your assurance that you have the courage and the fortitude [fol. 2776] to abide by that determination until such time as you are convinced by reasonable argument based upon the evidence in the case, or the lack of it, that you are wrong?

A. Yes, you have that assurance.

Mr. Cuff: Thank you.

By Mr. Fischbein:

Q. Mr. Conaty, when was the last time that you were questioned other than the time you were questioned before his Honor Sam Leibowitz?

A. Three months or four months.

Q. Was it during the time that Judge O'Dwyer or after the time Judge O'Dwyer became the District Attorney of this county?

A. I think it must have been.

Q. It was after he became District Attorney?

A. After he became District Attorney.

Q. Did you ever hear mentioned the names of Maione or Abbando during the time that you were in the courtroom while other jurors were being questioned?

A. No, sir.

Q. And you say that you read certain newspaper articles, but you did not follow the syndicated articles, is that correct?

A. That is correct.

Q. What newspapers have you been reading those articles in?

A. I read the *Times* in the morning, *Sun* and *Eagle* at night.

Q. And you read the *Daily Eagle* or the *Brooklyn Daily Eagle* regularly?

A. I do.

Q. And have you followed with interest any of the work [fol. 2777] of Judge O'Dwyer?

A. Galy in a general way.

Q. And you, of course, realize and appreciate the fact that these three defendants are entitled to a fair and impartial jury of their peers?

A. I do understand.

Q. And you also appreciate the fact that even if a person has the slightest doubt in their mind as to their ability to be a fair and impartial juror, they should tell us that?

A. That is right.

Q. And there is no law that could compel any man to serve if he has any sort of a doubt as to his ability to render a fair and impartial verdict on the evidence in this case, uninfluenced by any bias or prejudice or any sympathy?

A. I understand.

Q. That is right, too. And by reading of these articles you say that in a general way you got a general impression or formed some general idea as to the defendants or any of the elements of this case?

A. I think I was more specific than that. I said it did not take me long to find out that it was a subject-matter I did not care to continue reading.

Q. Was that because you expected to become a juror in this case?

A. That did contribute to it.

Q. That was one of the reasons?

A. Yes.

Q. Will you tell me when you stopped reading these articles?

A. Shortly after they appeared.

Q. In this case?

A. In this case.

[fol. 2778] Q. And you appeared, I believe, on Monday?

A. Tuesday.

Q. And you say that shortly after you appeared?

A. No, I did not; I said after they appeared, the articles.

Q. In other words, after the articles started to appear in the newspapers, you read a few articles, then you stopped reading them?

A. That is right.

By the Court:

Q. Was that because you knew you were on the special panel and you knew you might be called?

A. No, not alone, your Honor. That did contribute to it, but it was because I don't care to read subjects of this kind. It is very discouraging home.

Q. Do you belong to any man's club?

A. I do not, sir, not as such, I mean not as a men's club of any church. I belong to a men's club.

Q. That is Holy Cross, isn't it?

A. No, St. Francis of Assisi.

Q. I think you are at Holy Cross parish.

A. No, I am on this side of it. I am north of it. I am nearer Maple Street than Midwood.

Q. You are near Rogers Avenue?

A. It is nearer Bedford; it is between Bedford and Rogers, but it is one door east of Bedford.

Q. Then you must be on the north.

A. Northeast.

Q. On the northeast side of the street.

A. On the north side of Midwood Street.

[fol. 2779] Q. But nothing has been discussed in connection with Judge O'Dwyer's work at any of those meetings at St. Francis of Assisi?

A. I cannot answer that because I have not attended any of them.

Q. You have not heard any of them?

A. I have heard nothing.

Q. Do you know Mr. Kopf?

A. I do not know Mr. Kopf, no.

Mr. Fischbein: That is all.

Mr. Turkus: Satisfactory to the People of the State.

Mr. Climenko: Challenge peremptorily.

(The following talesmen were called and examined: Frank J. Melke, of 386 Bergen Street, and Charles D. Hertz, of 1121 Lafayette Avenue.)

By Mr. Turkus:

Q. Mr. Melke, were you in another case where I was prosecutor?

A. That is right.

Q. You gave me a response that required a challenge for cause?

A. That is right.

Q. And that was sustained by Judge Taylor?

A. Yes, sir.

Mr. Turkus: This juror was in another case that I tried. The response that he gave required a challenge for cause, which was sustained by your Honor.

The Court: I cannot be expected to remember the details of that challenge.

Mr. Turkus: I don't want anything said that is going to [fol. 2780] make any trouble. Excuse me; I think it was Judge Fitzgerald who sustained the challenge.

The Talesman: Last September.

The Court: That has nothing to do with this.

Mr. Turkus: If you do not want to entertain a challenge for cause, I will exercise a peremptory. He cannot serve.

The Court: Do you know the reason? Do you remember it?

Mr. Turkus: Sure.

The Court: Has it anything to do with this case?

Mr. Turkus: Absolutely.

The Court: All right; it is up to you.

Mr. Turkus: I don't care how you count it, whether it is cause or peremptory.

The Court: I will count it against you.

Mr. Turkus: All right, fine.

The Court: Call another gentleman.

(CARL M. GILT, of 108 East 39th Street, was called and took Seat No. 2 as an alternate juror.)

By Mr. Turkus:

Q. Mr. Hertz, do you live at 1121 Lafayette Avenue?

A. That is so.

Q. What do they call that section?

A. Bushwick.

Q. Are you in the investment business?

A. That is right, investment counsel.

Q. In other words, you counsel people on securities and [fol. 2781] bonds?

A. That is correct.

Q. Are you in business for yourself?

A. That is correct.

Q. Have you been in this business for years?

A. Five years.

Q. Prior to that what was your occupation?

A. Worked for a brokerage house.

Q. What was the name?

A. E. A. Pierce & Company.

Q. Are they still in business?

A. Consolidation.

By the Court:

Q. Where is your office?

A. 1121 Lafayette Avenue, my home.

Q. At your home?

A. That is correct.

Q. You are not downtown?

A. No, sir, my home.

Q. You are near what avenue?

A. Lafayette Avenue between Broadway and Bushwick.

Q. You are near the hospital?

A. Yes. Yes.

Q. The hospital is north of you and the Episcopal Church is south of you?

A. North.

Q. North, too.

By Mr. Turkus:

Q. Mr. Hertz, have you been called for jury service since Judge O'Dwyer was District Attorney?

A. Yes, several times.

Q. And you reached the box, did you not?

A. In the Halpin case I was challenged by Assistant District Attorney Cohen, because he had been a customer in one of the concerns where I was employed, one of the brokerage houses. That was in 1929, and for that reason, why, he excused me.

[fol. 2782] Q. And were you in another panel in another case?

A. Oh, yes.

Mr. Fischbein: Your Honor, will the Court instruct this juror not to mention the name of the case?

The Court: Yes.

Q. Were you impaneled as a juror in another case?

A. Yes, sir.

Q. And were you examined by the District Attorney and counsel for the defense?

A. No, I did not get to the box.

By the Court:

Q. Mr. Hertz, have you an office there or is that just your home?

A. It is my residence and office, for the last twenty-eight years.

Q. Have you mortgage investor broker?

A. No, securities and bonds.

Q. I was wondering how you get customers.

A. I am an investment counselor in an advisory capacity.

Q. Have you a sign out?

A. No. I have my own clientele over a number of years.

Q. You mean that people you know come to your home?

A. Private clients; that is correct.

Q. And you attend to investments for them?

A. That is correct.

Q. Have you a business card?

A. I don't think I have one with me. I might have. I have my own personal card, but I have not got a business card with me.

[fol. 2783] Q. I am trying to figure out, because you are not in the financial district. Is your method of business to advise as to speculations on a commission basis?

A. On a fee.

Q. That is, if there is a profit you get a part of it?

A. Yes, sir.

Q. And that applies to both listed and unlisted securities?

A. That is correct.

Q. New issues?

A. Sometimes.

Q. Securities listed on both boards?

A. On the Curb and on the Stock Exchange mostly.

Q. Lafayette Avenue between Broadway and Bushwick, that is a street of private homes, isn't it?

A. One or two apartments. Majority of them are private homes.

Q. Do you occupy a private home?

A. I own a private home for the last twenty-eight years, my own home.

Q. I am trying to place the block. Aren't those a number of three-story, frame fronts?

A. That is correct.

Q. With bay windows that come out to a point?

A. There is one or two on the block, one or two, not more.

Q. And the Episcopal Church is to the left on the north?

A. That is right.

Q. On Bushwick Avenue?

A. That is right.

Q. And the late Mayor Hylan lived very close?

A. Two blocks away.

Q. On Bushwick Avenue?

A. That is correct.

[fol. 2784] Q. On the west side of the street. And if you go far enough north of Bushwick Avenue you find a brewery. I was thinking of the Frank Brewery.

By Mr. Turkus:

Q. Mr. Hertz, were you on a jury panel in the spring of this year?

A. Yes.

Q. Did you reach the jury box?

A. No.

Q. Do you recall who the District Attorney was in that case?

A. Cohen was the District Attorney in one, and I think Mr. Barshay in the other.

Q. Do you know him?

A. Only from court. Weren't you the attorney in the Hicks case?

Mr. Barshay: No.

Q. Have you any prejudice in this case one way or the other?

A. To be honest with you, I have.

Q. Is it a prejudice that inures to the detriment of the defendants?

A. I imagine so.

Q. You see, defendants, no matter who they are, are entitled to have a jury that is going to deal with their case

fairly and squarely. If you have a prejudice against them, let me know, and we will know what to do.

A. I have a prejudice that I don't think can be removed.

Mr. Barshay: Challenge the juror, to save time.

CHARLES D. HERTZ, of 1121 Lafayette Avenue, Brooklyn, New York, being duly sworn, testified as follows:

[fol. 2785] By Mr. Barshay:

Q. When questioned by Mr. Turkus, you made certain answers. Now, under oath, sir, will you make the same answers?

A. Yes, sir.

Mr. Barshay: That is all.

The Court: I did not hear those answers.

Mr. Turkus: He said he had a prejudice against the defendants which he could not set aside.

Mr. Cuff: Could not be removed.

The Court: Sustained.

Mr. Turkus: May we take another one?

The Court: No.

By Mr. Turkus:

Q. Mr. Gilt, you are an electrical engineer?

A. Yes.

Q. Employed by yourself or some utility?

A. Consolidated Edison.

Q. I take it you have been with them a number of years?

A. Five years.

Q. May I go along with the understanding that engineering has been your profession since you have been employed?

A. That is right.

Q. You live in East 39th Street. That is Flatbush?

A. Vanderveer Park section.

Q. You heard questions I addressed to the other talesmen about the garment industry, clothing truckers, Brownsville-
[fol. 2786] East New York, Brooklyn waterfront?

A. Yes.

Q. Anything I should know about any possible contact you have there?

By the Court:

Q. What concern are you with, Mr. Gilt?

A. Consolidated Edison.

Q. How long have you been with them?

A. About five years. Prior to that I was with the Brooklyn Edison.

Q. How long have you been with the Brooklyn Edison?

A. About fourteen years.

Q. You live not far from the Kings County Hospital?

A. Quite a long ways. I am near the new Brooklyn College. Between Glenwood and H.

Q. I must have the wrong address. What address are you?

A. 1008 East 39th Street.

Q. I have 108. You live in Vanderveer Park?

A. That is right.

Q. Near Glenwood Road?

A. Between Glenwood and H.

By Mr. Turkus:

Q. To make this very snappy, Mr. Gilt, do you understand that part of the testimony in this case will come from accomplices?

A. Yes.

Q. Have you understood from the instructions given by the lawyers that you cannot have a conviction upon unsupported or uncorroborated testimony of an accomplice?

A. Yes.

[fol. 2787] Q. Do you have any bias or prejudice against a case which includes the testimony of an accomplice, or against a prosecutor for employing it in the prosecution?

A. No, sir.

Q. Will you use common sense and understanding to arrive at the facts in this murder case?

A. Yes, sir.

Q. Do you understand that you may not meet people in this room that you ordinarily meet in every-day business?

By the Court:

Q. You do not belong to St. Stephens?

A. What is that?

Q. The club of St. Stephens?

A. No, I do not.

By Mr. Turkus:

Q. Do you understand that there are various tests that you apply, tests that the Judge gives you and tests that you use your common sense about to see whether a witness tells the truth; do you understand that?

A. Yes.

Q. With respect to an accomplice, because he himself was one of the perpetrators of the crime, the law goes further and gives you the tests of care, caution and suspicion. The Judge will tell you about that. Will you keep your mental faculties alert to the effect that every test you apply to an accomplice witness is applied to test is he speaking the truth, not only about his own participation but the part that they played in the commission of the alleged murder; do you understand that?

A. Yes.

Q. Is there any reason now, as to why you cannot do that [fol. 2788] with common sense and understanding?

A. Not that I know of.

Q. Is there anything I should know as prosecutor about your ability to be a just and conscientious juror?

A. Not that I know of.

Q. In this case, if after you hear all the evidence, if then you have a reasonable doubt about the guilt of these defendants or any one of them, give him the benefit of it, or whoever you have the reasonable doubt about. Will you do that?

A. Yes.

Q. On the other hand, after you hear what Judge O'Dwyer presents in this court-room and you are satisfied that these three men in a group or combination together with others killed the victim named in this indictment and you believe it beyond a reasonable doubt, will you say it in your verdict without fear or hesitation?

A. Yes, sir.

By Mr. Fischbein:

Q. Mr. Gilt, have you read any newspaper accounts with respect to this case?

A. Very little.

Q. Or with respect to any one of the defendants?

A. No.

Q. By reason of the reading of these newspapers have you gained any sort of impression or opinion with reference to this case?

A. No, sir.

Q. May I know what newspaper you read generally?

A. *Times* and *Sun* and to a small extent *Eagle*.

Q. When you say to a small extent the *Eagle*, do you read it two or three times a week?

[fol. 2789] A. We take it regularly, but I don't read it for news items.

Q. In other words, the news items that appeared in respect to this case in the *Eagle*—

A. I don't recall that I read any of them.

Q. You, of course, appreciate, Mr. Gilt, that these defendants are entitled to twelve men or fourteen men, two alternates, who will fairly and honestly decide the issues in this case on the evidence?

A. Yes, sir.

Q. And these twelve men, of course, must be convinced beyond a reasonable doubt only as to the guilt, not the innocence, only as to the guilt of the defendants or any one of them, before they can vote for a conviction. You appreciate that? You, of course, being a college man, I take it, you know that a man who has any sort of an opinion, regardless of how slight the opinion may be, that opinion may subconsciously creep into the deliberations, may interfere with the calm, cool, deliberations of the juror after all the evidence has been submitted. That is true, is it not? With respect to the slight reading that you have indulged in in regards to this case, have you any opinion at all which may in any way at all interfere with your calm, cool deliberation of the facts in this case?

A. I believe not.

Q. Mr. Turkus spoke about accomplice testimony. You, of course, know what an accomplice is?

A. I do.

Q. In other words, some man is going to come in here and [fol. 2790] say, "I am the murderer," or, "I participated in the killing of the man mentioned in the indictment." Will you take that one fact alone into consideration, the fact that he admits under oath that he is a murderer? Would you take that fact into consideration in determining whether or

not that man speaks the truth with respect to people that he seeks to involve?

A. Yes.

Q. In his testimony. I have your word as to that?

A. Yes.

Q. And as you go down the line of the years, of his background, you find out he has committed murder after murder, and has committed perjury time and time again, and he has committed larcenies and burglaries and robberies with a gun—will you take those facts into consideration?

A. Yes.

Q. And with each vicious act of his life you will feel that his testimony should be more carefully scrutinized than the testimony of any other witness who may take the stand in this case?

A. Yes.

Q. The worse a man is, the worse his background may be, the more you will carefully weigh the testimony that that man offers to you, which he is expecting you to accept as evidence in this case. Will you not do that?

A. Yes.

Q. His Honor will tell you that on the uncorroborated testimony of an accomplice you cannot convict. You will follow that rule of law, I take it?

A. Yes.

Q. And of course, assuming, for the sake of argument, [fol. 2791] that you believe, after listening to the testimony of a man who says, "I am a murderer, or one of the murderers of Joseph Rosen," assuming you believe that witness, and, that witness being an accomplice, and assuming that the other evidence that is introduced to corroborate the testimony of the accomplice by way of the other evidence that is required by law, and you don't believe that corroborating evidence, and his Honor will tell you that if you don't believe the corroborating evidence which tends to connect the defendants or any one of them with the commission of the crime, you must acquit, even if you believe the testimony of the accomplice, will you have the courage to do just that?

A. Yes.

Q. Is there anything that has happened in the court-room since you have been here--and I believe you have been here since Tuesday—

A. Yes, sir.

Q. —which would interfere with your calm and cool deliberation of the facts in this case?

A. Not that I know of.

Q. You realize, do you not, Mr. Gilt, the fact that you are the 13th juror. You are not superstitious, are you?

A. No.

Q. I did not believe you were. But, you know, sometimes it has happened, it has happened in the past when the 13th juror move right into the box and becomes one of the jurors, he is called upon to deliberate upon the facts in this case, and that is why we are just as careful with the selection of [fol. 2792] the 13th and 14th jurors as we are with any other juror who has qualified up to the present time. By reason of having been in this court-room, has anything occurred which may in the slightest way interfere with your cool and calm deliberation of the facts in this case?

A. Not that I know of.

Q. You realize and appreciate the fact that no juror should permit prejudice to enter in'o his verdict; is that correct?

A. Yes.

Q. And you will agree with me, will you not, that we must as jurors, disregard any attempt to influence the jurors' verdict by the use of any innuendoes or any gesture which may create a prejudicial atmosphere in the court-room or prejudice the minds of the juror?

Mr. Turkus: That is objected to.

Mr. Fischbein: That is only a preamble to what I expect to lead up to, Mr. Turkus. I am going to lead up to it now.

Q. The fact of Mr. Turkus, by a gesture of his thumb and refers to the defendant: as "they," that would not be part of the testimony to be considered in this case?

Mr. Turkus: Not the thumb.

Mr. Fischbein: All right.

Q. I have your word, have I not, Mr. Gilt, that if you are selected, you will unhesitatingly, if convinced only beyond a reasonable doubt, bring in a verdict of Guilty?

A. That is right.

[fol. 2793] Q. And, by the same token, if the proof offered to you, if after separating the wheat from the chaff, so to speak, in this case, and you come down to the bone of the

testimony which you consider is the evidence, you find that the proof does not persuade your mind beyond a reasonable doubt as to the guilt of *any* one of these defendants, you would not hesitate to acquit?

A. No, sir.

By Mr. Cuff:

Q. Mr. Gilt, if the corroborating evidence offered by the prosecution in this case—and by that I mean, I think you know now that independent evidence that does not come from anyone who is an accomplice—you understand that, do you?

A. Yes.

Q. If that corroborating evidence comes from witnesses whose character is proved out of their own mouths to be depraved to the last degree, if it is shown that they have committed murders, robberies, burglaries, extortion, and even perjury, that is, swearing falsely in a court of record under oath, and if, by reason of that depraved character you have doubt about their ability to tell the truth in this case, and his Honor should instruct you that it is your duty to give the defendant or the defendants the benefit of that doubt, and to acquit them, will you have any hesitation in doing so?

A. Say that again.

Mr. Turkus: That is a long, complicated, legal question.

Mr. Cuff: It is not half as long as some that you ask.

Mr. Turkus: All right, I am sorry.

[fol. 2794] Mr. Cuff: If the witness does not understand it, I will try to reframe it so as to make it clear. I won't use that preamble again that I used first, but I say:

Q. If the corroborating evidence—you know what I mean by that?

A. Yes.

Q. —comes from men of utterly depraved character, who have admitted out of their own mouths that they are guilty of many murders, that they have committed robbery, burglary, extortion and even perjury, that in swearing falsely in another court of record under oath, and that raises in your mind a doubt as to their ability to tell the truth, or that they are telling the truth in this case, and his Honor

should instruct you that in that case it is your bounden duty to acquit, will you hesitate?

Mr. Turkus: That is objectionable. That is not a proper question.

By the Court:

Q. Will you, in event of the Court giving you instruction to that or any other effect, follow the instruction of the Court?

A. I will follow the instruction of the Court.

By Mr. Cuff:

Q. Now, Mister, I am going to ask you again: If that sort of testimony so impresses you that you cannot believe it, and his Honor should instruct you that it is your duty to acquit; will you do so?

A. Yes.

[fol. 2795] Q. That is all I wanted to find out, and I think that is what my question intended to convey.

You were asked by Mr. Turkus whether you had, if you were convinced of the guilt of these defendants beyond a reasonable doubt, whether you would without hesitation, fear, or reluctance, return a verdict of guilty. On the other hand, if you are not satisfied of their guilt or the guilt of any one of them beyond a reasonable doubt, that is, if you have a doubt based upon the evidence or the lack of it as to the guilt of any one or all three of these defendants, do you have the courage, the fortitude, and the will power to reflect that in a "Not guilty" verdict?

A. Yes, sir.

Q. I understood you had no impression about this case from any reading; is that right?

A. That is right.

Q. And you know what the presumption of innocence is, by this time, I believe?

A. I believe so.

Q. You do know, too, do you not, that it is a very, very substantial right of every defendant in a criminal case under our law; is that right?

A. Yes.

Q. And that if his Honor so instructs you, as I am sure he will, that it is your duty, and every juror's, to give to

each one of these defendants the full benefit of that presumption of innocence, that substantial right, will you do so?

A. I will.

Q. And will you so regard these defendants from the [fol. 2796] time you are sworn as a juror, throughout the trial, taking the evidence while you are deliberating on it in your jury room and until twelve of you agree that guilt has been established beyond a reasonable doubt—will you do that?

A. Yes.

Q. Because I think his Honor will charge you that is the law of this state and that is a part of our Penal Law, our Code of Criminal Procedure, under which we try these criminal cases. You realize, do you not, Mr. Gilt, that each juror must decide for himself, after weighing the evidence, all the facts and circumstances connected with the witness who gives the testimony, after discussing it reasonable with his fellow jurors, that it is the individual obligation of each juror to make up for himself, under his oath, his mind as to what is the truth? You realize that?

A. Yes.

Q. If after giving that consideration and after that discussion and after applying the rules of law that his Honor will give you for your guidance, you are satisfied that there is a reasonable doubt as to the guilt of a defendant or all three defendants, and if his Honor should charge you in that event that you must reflect that in a "Not guilty" verdict despite the number that may be opposed to you, despite the lateness of hour, despite any other consideration except the evidence in this case, will you do so?

A. Yes.

Q. And you will not be swayed from that decision by any consideration, fear, or circumstance except such as you [fol. 2797] find in the evidence in this case that you believe; is that right?

A. Yes.

Q. And I have your assurance on that solemnly?

A. Yes.

Mr. Cuff: Thank you.

By Mr. Climenko:

Q. I understand that you work for the Consolidated Edison?

A. That is right.

Q. And I heard that it was in the capacity as an engineer, but I do not know just what that means. Do you map out projects for them?

A. I have the designing and planning for the present distribution system.

Q. Is that the industrial?

A. Generally in industrial system, our own system.

Q. Are you the department head?

A. Borough head.

Q. Were you to serve here, that would not cause any embarrassment to your company, even though you are so well staffed?

A. I have a good assistant.

Q. The work could go on, even though you hold that kind of position?

A. It has to.

Q. You were asked some question about your reading as to this case, and I understand it has been purely casual; is that right?

A. That is correct.

Q. But of necessity you did see something in the papers somewhere, sometime about this case or about some of the people named in this indictment; is that true?

A. Yes.

[fol. 2798] Q. And that would be in one of the regular newspapers, because you do not read the tabloids; is that right?

A. Yes.

Q. Even though you may have seen several such articles, I have the impression from what you told me other lawyers who examined you that you were not sufficiently interested in those articles to read them through; is that correct?

A. I think that is correct.

Q. Whatever is the fact.

A. I cannot recall reading any articles.

Q. You understand that if in any sense questions are deemed personal, I cannot apologize to you for making them, because it happens to be my duty, you understand?

A. Yes.

Q. Is it your recollection that you did not read these articles through?

A. That is my recollection.

Q. Because at no time when they came to your attention, so to speak, at no time were you sufficiently interested in the story that they purported to tell?

A. That is right.

Q. And nothing that you have read has made so clear an impression at the time, or do you have so clear a recollection of anything you may have seen as to have caused you to form an impression about this case or about any of the persons now in this indictment?

A. That is correct.

Q. That is clear? So that so far as reading is concerned, you have no preconceived notion?

Mr. Turkus: Objected to. That has been answered three [fol. 2799] times now.

Mr. Climenko: Your Honor, I am trying to do it in an omnibus form.

The Court: Overruled.

Q. You have no impression?

A. No.

Q. I ask these questions on behalf of my client, Mr. Louis Buchalter. You have heard his name before, have you not?

A. Yes.

Q. I am distinguishing now between your reading and what you may have heard. Have you heard his name before, before you came into this court?

A. No, not before I came into court.

Q. You never heard his name before?

A. Not that I know of.

Q. So now I may take it that at no time have you either yourself participated in a conversation in which his name was mentioned, nor, if you did not participate, did you overhear such a conversation; is that correct?

A. That is correct.

Q. If there is by any chance any inaccuracy about that, I can form the impression that the conversation that you might have heard was of such slight consequence that it made no impression upon you whatsoever. That is clear?

A. Yes.

Q. So neither by reading nor through conversation nor through listening to a conversation do you come here,—you got your notice to appear in this court-room,—with any preconceived notion about the case or any of the defendants?

A. That is correct.

[fol. 2800] Q. You realize, of course, even though you don't have an impression from any of those sources, that this is a case which, in a sense, received public attention—you realize that?

A. Yes.

Q. And do you realize also that the District Attorney of this county is a gentleman who at the present time is the recipient of a great deal of public attention by reason of the circumstance that his name is brought to the public in a capacity other than that of his holding that office? You know that, don't you?

A. Yes.

Q. And Mr. Turkus has referred to the possibility of the submission of evidence in this court-room by the District Attorney, whom he names as Judge O'Dwyer. You heard that?

A. Yes.

Q. So that the District Attorney is the District Attorney, he holds the title of Judge by reason of the fact that he once was a judge and he is a candidate of his party for the high position of Mayor of this great city. You know all of those things?

A. Yes.

Q. You realize also, do you not, that if you were to act as a juror here you would have to deal impartially as between the defendants on the one hand and the District Attorney on the other; is that correct?

A. That is correct.

Q. And may I understand, without going into the details or breaking up the question, that it is your notion that in no sense are you to place upon the credibility or the believability or the honesty of any witness called by the District Attorney, a larger degree of value than you would ordinarily give him, simply because, as it happens, the District Attorney at the moment is a man who holds that job, once was a judge, and now is a candidate for Mayor?

A. That is right.

Q. You understand that that has got nothing to do with the consideration by a juror of the issues in a capital case?

A. Right.

Q. And that would not for one moment enter into your consideration?

A. No.

Q. Of the merits of the honesty of the witnesses who were produced here?

A. Correct.

Q. Do you understand that? The question has been asked before. So as to finish with it once and for all: The mere fact that Mr. Turkus says that Judge O'Dwyer will call a witness does not for one instant confuse you about the integrity of the witness as contrasted with the integrity of Judge O'Dwyer; is that so?

A. That is right.

Q. Because the witness is one man and Mr. O'Dwyer is another is that right?

A. That is.

Q. And it is very clear to you that Mr. O'Dwyer does not for one moment say to you, "Take my word for it the fellow is telling the truth"?

A. That is right.

Q. So you won't be confused at all by the unusual, unique and pleasant position that the District Attorney of Kings [fol. 2802] County occupies at this moment; is that right?

A. That is right.

Q. Nor would you for a moment permit the fact that there is an impending City election on our hands to becloud your notion as a juror; is that correct?

A. That is correct.

Q. Are you acquainted with any member of the police force?

A. I just have a speaking acquaintance with a policeman on our block.

Q. I don't mean it in that sense, as perhaps you may have gathered. Do you number among your friends, those that you cherish as friends, members of the police force?

A. No.

Q. Are you acquainted with any members of the District Attorney's staff?

A. No, not that I know of.

Q. Neither here nor in New York?

A. No.

Q. Is that correct?

A. Yes.

Q. Have you at any time in the past served as a juror in a criminal case?

A. Not in a criminal case.

Q. Only in a civil case?

A. Civil case.

Q. You realize, without going into the differences, that there are differences in the duties of a juror in a civil case as contrasted with a criminal case?

A. Yes.

Q. You understand that. Now, without bringing it to your attention specifically, if you were instructed by the Court as a matter of law that under your oath as a juror you could not return a verdict of guilty unless you were satisfied of guilt as against the defendants or any of them [fol. 2803] beyond a reasonable doubt, would you have any difficulty in following that instruction of law?

A. No.

Q. In other words, if the matter were put to you the other way, would you as a juror, under your oath, would you be under an obligation as sacred as the oath itself, as sacred as the gravity of the issues which are presented in a capital case—that is not language to you, either, is it, you understand what I mean by it—that you would be under that kind of obligation to return a verdict of Not Guilty if after hearing all of the testimony and after hearing the learned and able Assistant District Attorney argue what he considers the merits of his case, if after all that you entertained a reasonable doubt about the guilt of the defendants or any of them, then as to the defendants or any of them you would be under an obligation to say "Not Guilty," would you have any difficulty in following that instruction of law?

A. No.

Q. Now, even though in this particular case you know that you are dealing with a case which has public attention, you would not have any such inability or any trace of inability to return such a verdict if you entertained such a reasonable doubt as to the guilt; is that right?

A. That is right.

Q. And you understand, do you not, that that is the approach that if after hearing everything you do entertain a doubt, a reasonable doubt based on the evidence, you must return a verdict of Not Guilty? That is the way your mind [fol. 2804] must approach the proof in this case. You have no quarrel with that, because that means that you may not as a juror sit here and anticipate or expect proof of innocence; you may not require that of the defense; is that right?

A. That is right.

Q. So far as you are able to search your own mind, you know of no disability or impediment, you have no reservation about your ability along the lines of the law as you have heard it referred to in these various questions both by Mr. Turkus and the other lawyers, you have no hesitation about your ability to act fairly, without prejudice, without sympathy, be fair as a juror in this case?

A. That is right.

Mr. Climenko: Thank you, sir.

Mr. Turkus: Satisfactory.

Mr. Fischbein: Will your Honor permit me to ask one or two more questions?

The Court: All right.

By Mr. Fischbein:

Q. In view of the fact, Mr. Gilt, that the burden of proof in a criminal case never shifts, if we as the lawyers representing Louis Capone, put in a defense of alibi, and if that alibi creates a reasonable doubt in your mind, will you resolve that doubt in favor of the defendant?

Mr. Turkus: If the Judge tells him that.

Q. Would you do that? Would you follow that instruction of law?

A. A reasonable doubt as to guilt?

[fol. 2805] Q. As to his guilt.

A. Yes.

Q. In other words, you would not demand of the defendant to sustain the burden of establishing to your satisfaction beyond a reasonable doubt the alibi that may or may not be interposed?

A. No.

Mr. Fischbein: That is all.

Mr. Turkus: Still satisfactory.

Mr. Barshay: Satisfactory.

The Court: Take Seat 1. (To the Clerk): Give the regular jury oath.

(Carl M. Gilt, of 108 East 39th Street, was sworn as Alternate Juror No. 1.)

(George K. Ormond, of 1190 East 34th Street, was called and examined as to his qualifications.)

By Mr. Turkus:

Q. Mr. Ormond, you live at East 34th Street?

A. Yes.

Q. That is Flatbush. You are an electrical contractor?

A. Yes.

Q. In business for yourself?

A. Yes.

Q. Do you have anything to do with Brownsville, East New York, the garment district, the clothing district, the Brooklyn waterfront?

A. No.

Q. In any way in which you earn your livelihood, do you come in contact with anybody in those industries or in those districts?

A. No.

[fol. 2806] Q. Is there anything as prosecutor that I should know about your qualification to be a fair and impartial juror?

A. No.

By the Court:

Q. Where is your place of business?

A. 1609 Flatbush Avenue.

By Mr. Turkus:

Q. Are you in business for yourself, Mr. Ormond?

A. Yes, sir.

Q. Do you know any of the lawyers in the case?

A. No.

Q. Do you know the District Attorney of the County, Judge O'Dwyer, or any member of his staff?

A. No.

Q. Do you have any bias or prejudice about accomplice testimony that I should know about?

A. No.

Q. If accepted in the case, will you use common sense and understanding in weighing the believability of an accomplice witness and of the proof that you hear in the case?

A. Yes.

By the Court:

Q. You have a retail store, too, haven't you?

A. Well, I had. I simply have desk room at the present in this other store, radio store. I have nothing to do with

the store. I had a radio shop in Newkirk Plaza. Maybe you remember the place.

Q. That is Eisenberg's?

A. I was up the street a few doors for about fifteen years.

Q. Competition drove you out?

A. Eisenberg was too much for me.

[fol. 2807] By Mr. Turkus:

Q. Do you understand it is not whether you like or dislike the accomplice; does he speak the truth about the defendants? Do you understand that is what you are here for?

A. Yes.

Q. That you are going to devote your mental faculties to find out are they guilty of this charge, or are they not? You will get the rules from the Judge, apply them to the facts in the case, use common sense and understanding, talk the case over. Is there anything I should know about your ability to be fair?

A. I don't think so.

Q. Have you served as a juror before?

A. I have.

Q. Have you been here while we went over all these discussions?

A. No, I just came in today. I was out of town.

Q. All right. You have been around for a long time. Will you use common sense in this case and do justice with your verdict in the case?

A. Yes.

Q. Give the defendants everything the law of the land says they should have. The Judge will tell you what it is, the presumption of innocence, the doctrine of reasonable doubt, the burden of proof, give them everything the law of the land says they should have. Of course, no more and no less; is that right? Give them everything they are entitled to. And if after you hear all the evidence in this case, if then you have a reasonable doubt about their guilt, come right in and say so. Will you do that?

[fol. 2808] A. Yes.

Q. Now, on the other hand, by the time all this evidence comes before you that is in this case and you hear it all and you hear the law and you talk it over with the other jurors, if then your mind tells you these are three of a group or combination that played a part in killing the victim named

in this indictment, can I count on you to come in here and say so?

A. Yes.

Q. Nothing in the world to stop you, is there?

A. No.

By Mr. Cuff:

Q. Mr. Ormond, have you ever served on a jury in a criminal case—actually served?

A. Yes.

Q. How long since the last time?

A. A year ago last August. It was just a robbery case.

Q. Any of the lawyers that are here now in that case?

A. None.

Q. As the result of anything you read or any talk you had with anybody about the defendants or this case, have you formed any impression?

A. I have not read anything about it.

Q. You do not know a thing about it?

A. Nothing.

Q. So, if you are selected, you are going to start off at scratch, you are going to be able to listen to the evidence in this case with an open mind, and with a mind that is directed toward deciding where the truth lies?

A. Yes.

Q. And I can rely on it? I understand, then, that there [fol. 2809] is nothing in the world that would sway you from serving in this case and rendering a verdict that you under your oath of office and on your conscience would regard as a just verdict; is that right?

A. Yes.

Mr. Cuff: Thank you.

By Mr. Fischbein:

Q. Mr. Ormond, I am going to ask you just one question. Do you feel that if you are accepted as a juror in this case the defendant whom I represent together with my associates, Mr. Louis Capone, could depend upon you to give him a fair and impartial trial?

A. Yes.

Q. You realize further, do you not, that once I sit down now I am not going to ask you any more questions, nor will the lawyers ever speak to you until the conclusion of the

case. Do you feel now any reluctance to serve as a juror in this case?

A. No.

Q. Is there any reason in the recesses of your mind which may interfere with your calm and cool deliberation of the facts in this case?

A. No.

Q. Have you ever served in a capital case as a juror?

A. No, I have not.

Mr. Fischbein: That is all.

By Mr. Barshay:

Q. Sir, have you read about this case?

A. No, I have not.

Q. Have you heard about it?

A. (Answer inaudible.)

[fol. 2810] Q. Have you read about the defendants?

A. No. I might have seen his name in print.

Q. You have formed no impression?

A. No.

Q. So Mr. Buchalter can leave in your hands to preserve every legal right given to him by law?

Mr. Turkus: There is one question I am required to ask.

By Mr. Turkus:

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No.

Mr. Turkus: Satisfactory.

Mr. Barshay: Satisfactory.

The Court: Swear the gentleman. The same oath as the jury.

(George K. Ormond, of 1190 East 34th Street, sworn as Alternate Juror No. 2.)

The Court: The other members of the panel are excused with thanks.

(To the jury): Gentlemen, of course there has been a great deal said about this case being a very lengthy case. It may not be as long as you are afraid it will be, but from now on, having taken the oath and in order to prevent the

jury from obtaining any impressions from outside, it will be necessary to house the jury. Instructions concerning the housing of jurors are in form which is in the possession of the captain of court attendants. That will be given to the stenographer to make a part of the record in this case. The captain of court attendants will inform you as to what those instructions are.

[fol. 2811] So far as this afternoon is concerned, those who have been chosen will have to, of course, get certain equipment from their own homes. You can take that up with the captain of the court attendants. Where it is feasible to do so, you may send home for such things as you need. Where it is necessary that you go home and pick out the things that you need, a Court officer will accompany you. This will take some time. There will be an abundance of time in which to get settled. In the meantime, you get acquainted. But I must caution you above all things, do not at any time in conversation discuss this case. Do not at any time in conversation even discuss, critically or otherwise, the procedure or anybody connected with the case. The important thing to do is to keep your brains and consciences on the evidence and give a fair and impartial verdict.

Ample and reasonable recreations will be provided, of course. You will be advised later as to what these are. If there is any difficulty in connection with the housing because it comes suddenly, then take it up through the captain of the court attendants and he, in turn, will take it up with the Court. In the meantime you may leave the box, and from now on the captain of the court attendants will take care of the jury.

Mr. Cuff: May I ask your Honor to say to the jury——

[fol. 2812] The Court: Yes.

Mr. Cuff: The fact that they are put to this inconvenience is not to be considered as against either the people or the defendants.

The Court: Not at all. It is in fairness to the defendants that your mind shall remain in its present condition. Nobody at home, no one you shall meet, nothing that you shall read, nothing that you shall hear on the radio, shall be permitted by any possible chance to have any effect on the rendition of your verdict.

You may retire, gentlemen.

(The jury retired from the court-room.)

The Court: Monday morning at ten o'clock. Counsel have had a long and strenuous battle, lasting five weeks. This will allow a breathing spell for come-back, and also for the preparation of the opening addresses concerning the evidence to be presented. The Court intends from now on to see that counsel are not overtaxed. The working hours will be from 10 to 4. That will allow time for conference without the necessity of counsel going over to Manhattan to the House of Detention or to the Tombs. It will not be too great a strain on any of the defendants, and will allow them to return to their respective institutions in time for the regular evening meal. It is important throughout the [fol. 2813] case that nobody shall become so overworked that quality of the work will be impaired.

The defendants are remanded.

Mr. Cuff: Judge, may I, now that the selection is over, ask that the wife of the defendant and his brother be permitted to see him here?

The Court: No. The Court is not a jailer. I said that repeatedly. So that it won't be sensationalized as a news set-up, they have ample opportunity to continue their visits at these institutions, and it is not necessary that they shall ask the Court to take over the duties of a jailer.

Mr. Cuff: No, they did not think that, Judge.

The Court: I am trying the case. I am not preventing them from seeing their relatives. They can see them *ad lib.* but they will see them the same as anybody else when they are under confinement.

(Whereupon an adjournment was taken to Monday, October 20, 1941, at 10:00 A. M.)

[fol. 2814] Rules and Regulations Governing the Custody of Jurors While at Hotels During the Progress of a Trial

1. All Jurors must be kept together at all times and their rooms must be so located that they may be kept segregated at all times from other guests.

2. All Room Telephone service must be discontinued while Jurors are in their rooms.

3. All urgent telephone calls for any juror must be transmitted by the Attendant in charge.

4. All packages or letters must be censored by the Attendant in Charge.

5. All urgent conversations with friends or relatives must be in the presence and hearing of the Attendant in Charge.

6. All newspapers (or magazines which are allowed by permission of the court) must be deleted of all references to the case on trial or other matter that might unduly influence the Juror.

7. Radio will be allowed only in the room set aside as a recreation room and will be under the supervision of an attendant.

8. There must be an attendant on watch at all times in the corridor of the hotel where the jurors are segregated and allow no one to enter the room of any juror unless by special permission of the Court of the Attendant in Charge. [fol. 2815] 9. All requests or complaints made by the jurors must be submitted in writing and presented to the Court.

10. No attendant will allow any extra privilege to any juror unless specifically ordered by the Court or the Chief Court Attendant.

11. Medical requirements shall be met. An attendant shall as needed accompany a jurymen on visits to his own physician.

(Sgd.) John F. Lantry, Chief Clerk.

(Sgd.) Thomas F. Gannon, Chief Court Attendant.